

NOTABLE
CROSS-EXAMINATIONS

by the same author

SONGS OF THE SPECIALS

Introduction by
G. K. Chesterton

NOTABLE CROSS-EXAMINATIONS

*CHOSEN AND ANNOTATED BY
EDWARD WILFRID FORDHAM
of the Inner Temple
Barrister-at-Law*

*With a Foreword on
“THE ART OF CROSS-EXAMINATION”*

by
The Rt. Hon. SIR TRAVERS HUMPHREYS
and a Note
by the late SIR EDWARD CLARKE, K.C.
on
“THREE FAMOUS CROSS-EXAMINERS”

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To
MY WIFE
who never cross-examines me

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Of my deep indebtedness to Sir Travers Humphreys for his great kindness in contributing to this book I have written a few, quite inadequate, words in the final paragraph of my Preface.

E. W. FORDHAM

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PREFACE

THIS book is not an attempt to present in a summarised form a number of notable trials, civil and criminal. The reader who wishes fully to follow, and completely to understand, the complexities of such famous cases as for example that of "The Claimant", who represented himself to be the lost heir to the Tichborne estates, or of the murderers Crippen and Fox, is referred to the admirably compiled volumes¹ which set out the whole of the facts and deal *in extenso* with the evidence in each particular case.

The object of this book is rather to let the cross-examination of one or more of the principal witnesses, in each case dealt with, speak for itself, with only such notes added as may be needed to clarify what might otherwise be obscure. In almost every trial a considerable part of the evidence adduced, though essential to the proof of the case, is less dramatic than that of the principal parties concerned. Each case referred to here is therefore prefaced by an attempt very briefly to explain the chief matters at issue; indicating, rather than setting out in detail, the points which the witnesses whose cross-examination is cited had established, or endeavoured to establish, in their evidence in chief.

It is not intended in these pages to assess or criticise the value or brilliance of the cross-examination. The reader will have to do that for himself. He will, indeed, be in the position of a listening juryman—save, of course, in this—that he will have to rely upon himself, and will not have the invaluable assistance of the Judge's summing up to guide him in his assessment. This, however, is a less grievous handicap than it would have been had not the

¹ *The Tichborne Case*, by Lord Maugham. (Hodder & Stoughton, 1936.)
The Trial of H. H. Crippen, Filson Young. *The Trial of Sidney Harry Fox*, Tennyson Jesse. (Both in "Notable British Trials Series", Hodge & Co.)

verdict—it is to be assumed—been well and truly arrived at, with the help referred to, in the more or less distant past.

The less well instructed of the laity have, on occasion, been known to speak of cross-examination as being synonymous with verbal bullying. This is a grievous misapprehension, as the following pages will, it is to be hoped, demonstrate. Let him who still doubts whether it *is* a misapprehension, attend an action in the High Court, or a trial at the Old Bailey, and his mind will be disabused of the heresy. That counsel have, at times, adopted a bullying technique cannot be denied; but the most brilliant exponents of the art have followed no such practice, nor would a Judge of the Supreme Court to-day tolerate any unfairness of the kind.

Although the cross-examination of counsel is now, for the most part, free from any kind of brutality calculated to unnerve or confuse a witness who may, or may not, be anxious to give truthful evidence, it should be added that in days gone by the Bench, in at least one notorious instance, set a very lively example of browbeating and threatening, which has fortunately been held in abhorrence ever since. George Jeffreys, Baron Jeffreys of Wem, later Lord Chief Justice, and ultimately Lord Chancellor, was of course the Judge in question. Of him H. L. Stephens writes:¹ “His learning in law was never extensive; but his natural abilities were very great, and, as far as one can judge from the reports, he practised cross-examination with much more real skill than most of his contemporaries. In fact his cross-examinations from the bench though scandalous and brutal to the last degree, seem to be the earliest instances we have of the art as now understood.”

This shrewd appraisement is perhaps sufficient justification for including a specimen of that Judge’s method of handling witnesses,

¹ *State Trials, Political and Social*. Selected and edited by H. L. Stephens (G. Duckworth & Co.), 1899, p. 240.

as displayed in the course of his trial of Alice Lisle during the notorious "Bloody Assize" of 1685.

The Concise Oxford Dictionary defines the word "cross-examine" thus: "Examine (especially witness in legal action) minutely, with a view to checking previous examination, or eliciting suppressed facts." For the present purpose, though not of course for a legal text-book, this is an adequate definition.

The cross-examinations with which we shall be concerned had many different objects in view. Whistler, for example, was cross-examined for the purpose of discrediting his skill and reputation as an artist; the Claimant, to show that he was lying when he alleged that he was Roger Tichborne; Crippen, to convince the jury that he had poisoned his wife. Broadly, however, "checking previous examination or eliciting suppressed facts" is as succinct and accurate a description of the desired objective as can be conveyed in a few words.

As every lawyer, but by no means every layman, knows, the most important distinction between "examination in chief" (that is, the examination of a witness, either in civil or criminal proceedings by his own counsel), and cross-examination is that in the former leading questions are not (with a few exceptions, such as that relating to undisputed matters) permissible, whereas no such prohibition rests upon cross-examining counsel, who is, therefore, much less restricted than his opponent in questioning a witness; though he, too, is subject to certain limitations into which it is needless to enter here.

But what is a leading question? "What were you doing at 10 p.m. yesterday?" Has one not heard some such reply as, "Ah! that's a leading question" or, "I'm not going to be cross-examined"? Of course it is *not* a leading question, nor is it an example of cross-examination. On the other hand, "Were you in Trafalgar Square at 10 p.m. yesterday?" is a leading question, and one that, in legal proceedings, *may* be asked in cross-examination. As this elementary example shows, a leading

question is one that suggests the answer; and since it is from the witness, and not from counsel, that the facts are to be elicited, the reason for the prohibition referred to is obvious.

It will, it is hoped, be clear from consideration of the examples that follow that cross-examination in civil actions can be no less interesting than in criminal trials.

With regard to the latter, it must be borne in mind that it was not until the Criminal Evidence Act was passed in 1898 that a prisoner on trial (with one or two exceptions) was allowed to give evidence on his own behalf. He might make a statement from the dock, but he could not be sworn as a witness, and could not, therefore, be cross-examined. It is for this reason that such notable trials as that of Burke and Hare (1828), William Palmer (1856), and Charles Peace (1879) make no appearance in the pages that follow.

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It may well be asked with some acerbity on what principle the ensuing examples have been chosen. To this enquiry no answer can be given that is in the least likely to satisfy the enquirer. Every anthologist is liable, and indeed is likely, to be shot at, both for what he has omitted and for what he has included. The compiler of this book neither expects nor deserves immunity from such fusillades. So vast and so varied is the field from which examples might be taken that he can only crave forgiveness for his omissions, and hope that some readers may find interest in the selections he has ventured to present.

There are, of course, on record many brilliant cross-examinations (as, for instance, that of Oscar Wilde by Sir Edward Carson) which are so well known, and which have been so adequately dealt with by other writers, that they are not included here. Mr. Lustgarten, for instance, in his *Verdict in Dispute*,¹ has dealt so fully and so competently with such cases as that of Mrs. Maybrick, Edith Thompson, Steinie Morrison, and others, that it would be futile to re-tread ground thus adequately covered.

¹ (Allan Wingate).

Again, many cases, both civil and criminal, are of so involved a character that the cross-examination of any important witness, however brilliant it may have been, would hardly be intelligible without a lengthy introduction, acquainting the reader with the assertions and denials of other witnesses: hence many omissions herein which it would otherwise be difficult to justify. For our purpose, those cross-examinations only have been sought which are largely self-explanatory.

As to the majority of the examples actually to be found here, either the popular interest attaching to the facts of the cases themselves or the force of learned counsel's questioning has led to their inclusion. Thus Coleridge's cross-examination of the Claimant and of one of his witnesses, as in part set out hereafter, together with Hawkins's cross-examination of one witness, was in the course of a case that caused unexampled excitement throughout the country. Similarly, Russell's exposure of the forger, Pigott, cleared the Irish leader, Parnell, from an imputation which must otherwise have proved fatal to his career. These cross-examinations, therefore, to use the pestilent *cliché* of to-day, may be said, with a scintilla of truth, to have made history—a feat more often claimed than accomplished.

The battle of wits between Charles I and the Court before which he was tried is an instance of attempted cross-examination on both sides, in which neither party, as will be seen, succeeded in obtaining the object desired. The Court refused the King's demand that it should justify its right to try him, and the King declined to make the "answer" upon which the Court insisted.

The case of *Gilbert v. The Era* affords a little light relief against the dark background of the murderers Crippen, Fox and Vaquier.

Clarence Darrow's duel with William Jennings Bryan is included, partly because so staunch and dogged a defence of Fundamentalist doctrine has probably never before or since been heard in a Court of Law, either here or in America; and partly because Darrow in the United States won for himself so high a

reputation that his inclusion in any work of this kind is but a just tribute to his life's work.

So contradictory was the evidence in the trial of Mrs. Helen Duncan, the "materialisation medium," at the Old Bailey, and so unusually resilient was the witness, Sydney Stanley, at the Lynskey Tribunal, that it is thought some of the cross-examination in those cases has an interest of its own.

It may perhaps be questioned whether Dr. Kenealey ought to appear in these pages. Obviously he does not do so for the same reasons that call for the inclusion of Lord Russell of Killowen, Lord Carson, Sir Edward Clarke or Sir Patrick Hastings. He was, however, a most remarkable man, and his conduct of the defence in *R. v. Castro* (the trial of the Tichborne claimant for perjury) was of so extraordinary, so monstrous, a character that those (and they are not a few) who find a "scene in Court" at least as exhilarating as the normal course of a trial will not, it is hoped, find it uninteresting to read the blistering strictures passed upon him by Lord Chief Justice Cockburn in the course of his summing up. It will be seen that these strictures related not only to the learned counsel's abusive cross-examination of witnesses, but also to his attacks upon the Bench.¹

¹ In the course of the case the following brisk exchanges took place between the Bench and the doctor:—

The Lord Chief Justice : I cannot help thinking that our time has been most sadly wasted.

Dr. Kenealey : That will be for the jury whether I have failed or not. Your Lordship is perpetually insulting me from the Bench.

The Lord Chief Justice : What do you say?

Dr. Kenealey : I said I was perpetually receiving insults from your Lordship.

The Lord Chief Justice : Do not use that language to me, because I will not bear it.

Dr. Kenealey : I understand what your Lordship has said to me. Taking it with the numerous other things of the same sort which your Lordship has said to me, it is undoubtedly open to that.

The Lord Chief Justice : Sir, you have no business to address such language to the Court.

Mr. Justice Lush : It is quite time that you should end this cross-examination which has wasted a good deal of time.

The Jury : And which has no effect on the mind of the jury whatever.

So strongly did the leaders of his profession disapprove of Dr. Kenealey's conduct that he was excluded from the Bar Mess of his Circuit, and ultimately disbarred by the Benchers of Gray's Inn.

Nevertheless, such was the popularity of the Claimant's cause, that the doctor was, very shortly after the conviction of his client, elected as M.P. for the constituency of Stoke-on-Trent, defeating both a Conservative and a Liberal opponent.

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One word about the headnotes, or brief introductions, to the examples that follow. They are very short, and, it is to be feared, very dry. Their object is merely to relate such facts (many of which must be well known to most readers) as will make clear the exact purpose of the cited cross-examination, or rather, that part of it which is here set out. The writer offers his apologies to all who find these headnotes unnecessary, and therefore tedious. They may, however, follow the worthy example of those children in Kensington Gardens who skip with such assiduity and address.

It would be presumption on the part of the compiler to dilate on the value and interest of what Sir Travers Humphreys has been good enough to write on the subject of this book. It must suffice to say that he, the present writer, is profoundly grateful that one who, at the Bar, was a great exponent of the art, and who, on the Bench, is a consummate authority on its exercise, alike by past and present practitioners, should have found time to contribute his delightful notes on "The Art of Cross-examination".

FOREWORD

by

The Rt. Hon. Sir Travers Humphreys

“THE ART OF CROSS-EXAMINATION”

ONE often hears it said in these days that cross-examination is a lost art. The statement, in common with many other such didactic utterances, is founded upon fact, but itself requires explanation. The truth appears to be that the occasions calling for sensational cross-examination are to-day few and far between. *Causes célèbres* are out of fashion. Whether this is due to the lack of means in the class from which the principal actors were drawn, or to other causes, I do not profess to know or care. Long cases, both civil and criminal, are common enough, but libel actions seem to get settled, family disputes are compromised, and the evidence called for the prosecution in criminal trials tends to be accepted at its face value, so that the only opportunity for effective cross-examination goes to the leading counsel for the Crown, whose duty it is to test the story of the accused as told in the witness-box. Even the evidence to be called, and the arguments to be used for the defence, appear to be known to the evening and Sunday newspapers. So it is that the headline “Startling Sensation in the Blank Case” may be found to refer to nothing more exciting than the statement of counsel for the defence that he is going to call the prisoner’s mother-in-law.

I dare say that when the time comes the Bar of England will produce worthy successors to the great men of the past.

It is, I think, improbable that the present generation will ever have the opportunity of listening to such a brilliant exposition of this most difficult art as was afforded by C. F. Gill in his prime. Charlie Gill was no orator, nor was he a particularly attractive speaker. He depended almost solely upon the answers to his

questions in cross-examination to obtain the remarkable verdicts which so often followed. Every question was the result of careful thought, and he would spend hours in preparing his cross-examination. He never put a question without having satisfied himself that the answer could not injure his client's case. He said of himself that he never asked a question without knowing what the answer would be.

Perhaps the greatest tribute to his skill as a cross-examiner is to recall the fact that his most successful efforts were the result of his cross-examination of honest and truthful witnesses. Anyone can make hay of a palpably dishonest witness, but Gill's victims were mostly policemen and expert witnesses such as doctors and handwriting experts and others whose character could not be attacked. A stupid witness, an over-zealous or too reticent one, he regarded as fair game, while a policeman with a plan was apt to be reduced to a state of mental confusion resulting (as Gill would say to the Jury) in showing that none of the witnesses for the prosecution could have seen the things they had testified to. The only barrister of whose re-examination Gill was really afraid was my old master-in-law, E. T. E. Besley, a very large man, very solemn in appearance, with an air of intense respectability, and the very embodiment of common-sense. His re-examination of a witness badly mauled by Gill would take this line :

Besley : Sergeant, how long have you been in the Force?

Answer : Twenty-five years, Sir.

Besley : My learned friend has apparently induced you to say that nine and three make fifteen. The Jury may not accept your evidence upon that point, but (*slowly and earnestly*) after twenty-five years experience as a police officer, have you the slightest doubt that the man you saw running away that night was the prisoner?

In most of the cases selected by my friend, E. W. Fordham, to form his very interesting anthology, the cross-examiner had an

easy task. In the Tranby Croft case the line of attack was clearly “If innocent, why confess guilt?” Again, in his cross-examination of Pigott, Russell had overwhelming material. The same may be said of the Druce case; indeed no one took seriously the evidence of the man Robert Caldwell, most persons suspecting him from the first of being a charlatan, or, what he was subsequently shown to be, a lunatic. These and some of the other cases in the book were selected by Mr. Fordham, as he states in his Preface, for quite different reasons. The short extract from the cross-examination of Dr. Stevenson by Mr. Edward Clarke, Q.C., as he then was, when defending Mrs. Bartlett on the charge of murdering her husband, exhibits, however, the crowning point of a magnificent forensic triumph. Mrs. Bartlett had everything in the shape of evidence and prejudice against her. If ever it can be said that an accused person owed her life to the efforts of her counsel, that is surely true of Adelaide Bartlett. The quotation from Sir James Paget’s letter to be found on page 66 of this book is, in the circumstances, the last thing to be said of this remarkable trial.

In modern times the manner of cross-examining the accused person has, I think, gone astray. The question so often put beginning with “I suggest to you” is one which should be reserved for a speech to the jury. The real use of cross-examination in such a case, apart from clarifying any statement of the accused which admits of doubt as to its meaning, is to obtain the accused’s explanation of matters which his evidence-in-chief has left untouched. In this respect the cross-examination of Crippen by Richard Muir was admirable, and all the more telling because no evidence had been called by the prosecution upon certain matters which the defence had studiously avoided. I refer, of course, to Crippen’s actions when, as he said, he discovered that his wife had disappeared. The prosecution had ascertained that no inquiries of any sort as to the whereabouts of his wife had been instituted by him, but, for obvious reasons were unable to prove

the negative. The effect upon the jury of Crippen's answers at this stage was very marked.

In conclusion, I can only regret that Mr. Fordham was unable to include in his anthology some account of the cross-examination of Frederick Henry Seddon in 1912 by Sir Rufus Isaacs when Attorney-General. Mr. Fordham is quite right in omitting this case as one of those which, as he says in his Preface, would hardly be intelligible without a lengthy introduction. It remains, to my mind, the most perfect example of the art of cross-examination of which I have any knowledge. Seddon was charged with the murder by poison of his lodger, Miss Barrow. The evidence was entirely circumstantial. Without the evidence of Seddon there was just a chance that the jury might not regard the proof of his guilt as sufficiently strong. It depended, to quote the opening speech of the Attorney-General, upon proof of three things—interest, opportunity, conduct. In such a case the explanation of the accused, if given in the witness-box, is of the first importance. As I have written elsewhere, Seddon was under cross-examination for the greater part of a day. During that time the Attorney-General never raised his voice, never argued with the witness, never interrupted an answer, and scarcely put a leading question. Seddon was taken through the history of the case and invited to give his own explanation of every material matter. The result was to turn a fairly strong case into a conclusive one. Seddon left the witness-box having explained away nothing of the case against him, but with his true character revealed as that of a hard-headed, clever, grasping and heartless individual, just the type of man who might be capable of watching without pity the painful death in his house from the poison he had caused her to take, of a woman from whom he had received nothing but benefits. So much more important than the actual answers may be the impression obtained and the atmosphere created by a skilful cross-examination.

TRAVERS HUMPHREYS

I

TRIAL OF KING CHARLES I

A King's Questions

THROUGHOUT the trial of King Charles I, as reported “by authority, to prevent false and impertinent relations,” there was certainly no actual examination or cross-examination as those words are understood to-day. The few following extracts from the proceedings, as first published and licensed, may therefore be thought to require some kind of excuse or apology for their presence here. What in fact appears to have happened was that the King tried (and in so doing showed no small ability) to cross-examine the Court as constituted by Parliament, with its Lord President and eighty members, as to its right or power to exercise any jurisdiction over him. The Court, on the other hand, through its President, John Bradshaw, resisted the King’s right to question its authority.

It should, by the way, be noted that H. L. Stephens in his *State Trials, Political and Social*¹ refers to “the essential illegality of the trial”—Bradshaw having been appointed President of this newly created Court *ad hoc* after four other nominees had declined to accept the position.

From the following extracts it will be seen how determined were the King’s efforts to make his point—namely, that he could not rightfully be called upon to plead before an unlawful authority.

The King was charged with “Treason and High Misdemeanours”. The report relates that when the prisoner was brought in by the Sergeant at Arms, “after a stern looking upon the Court, and the people in the galleries on each side of him, he

¹ Duckworth (1899).

places himself, not at all moving his hat, or otherwise showing the least respect to the Court". The formal charge having been read, the Lord President said, "The Court expects your answer," to which the King replied: "I would know by what power I am called hither. . . . I would know by what authority, I mean lawful; there are many unlawful authorities in the world, thieves and robbers by the highway; but I would know by what authority I was brought from thence (the Isle of Wight) and carried from place to place, and I know not what; and when I know what lawful authority I shall answer. . . . Therefore let me know by what lawful authority I am seated here, and I shall not be unwilling to answer. In the mean time, I shall not betray my trust. . . . Therefore resolve me that and you shall hear more of me." The dialogue continues thus:—

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Lord President: If you acknowledge not the authority of the Court, they must proceed.

King: . . . England was never an elective kingdom, but an hereditary Kingdom for near these thousand years, therefore let me know by what authority I am called hither. I do stand more for the Liberty of my people than any here that come to be my pretended Judges: and therefore let me know by what lawful authority I am seated here, and I will answer it, otherwise I will not answer it.

Lord President: Sir, how really you have managed your trust is known, your way of answer is to interrogate the Court, which beseems you not in this condition. You have been told of it twice or thrice.

King: Sir, I desire that you would give me, and all the world, satisfaction in this: let me tell you it is not a slight thing you are about: I am sworn to keep the peace, by that duty I owe to God and my country, and I will do it to the last breath of my body; and therefore ye shall do well to satisfy first God, and then the country, by what authority you do it; if you do it by an usurped authority you cannot answer.

There is a God in Heaven that will call you, and all that give you power, to account. Satisfy me in that, and I will answer; otherwise I betray my trust and the liberties of the people: and therefore think of that, and then I shall be willing. For I do avow that it is as great a sin to withstand lawful authority as it is to submit to a tyrannical, or any other ways unlawful authority; and therefore satisfy me in that, and you shall receive my answer.

Lord President: The Court expect you should give them a final answer: their purpose is to adjourn to Monday next; if you do not satisfy yourself, though we do tell you our authority, we are satisfied with our authority, and it is upon God's authority and the Kingdom's; and that peace you speak of will be kept in the doing of justice, and that is our present work.

King: For answer, let me tell you, you have shown no lawful authority to satisfy any reasonable man.

Lord President: That is, in your apprehension; we are satisfied that are your Judges.

King: It is not my apprehension, nor yours neither, that ought to decide it.

Lord President: The Court hath heard you, and you are to be disposed of as they have commanded.

(At the next sitting of the Court the Lord President again demanded that the King should "answer to the charge". Again the King took up the same line of argument as before.)

King: A king cannot be tried by any superior jurisdiction on earth; but it is not my case alone, it is the Freedom and Liberty of the people of England; and do you pretend what you will, I stand more for their Liberties. For if power without law may make laws, may alter the fundamental laws of the Kingdom, I do not know what subject he is in England that can be sure of his life, or anything that he calls his own; therefore when that I came here I did expect

particular reasons to know by what authority you did proceed against me here.

Lord President: Sir, I must interrupt you, you may not be permitted; you speak of law and reason, and there is both against you. Sir, the Vote of the Commons of England assembled in parliament, it is the reason of the Kingdom, and they are these that have given (power) to that law according to which you should have ruled and reigned. Sir, you are not to dispute our Authority; you are told it again by the Court. Sir, it will be taken notice of, that you stand in contempt of the Court, and your contempt will be recorded accordingly. . . . You may not demur to the jurisdiction of the Court; if you do, I must let you know that they overrule your demurrer. . . .

King: I say, Sir, by your favour, that the Commons of England was never a Court of Judicature: I would know how they came to be so.

Lord President: Sir, you are not to be permitted to go on in that Speech and these discourses.

(*Again the King was required to answer the Charge*). . . . The command of the Court must be obeyed; no Answer will be given to the Charge.

King: Well, Sir!

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(*At the third sitting of the Court on January 23rd, 1649, the argument between the King and the Lord President was resumed. The King did not formally plead to the charge, nor did the President answer the King's interrogatory to his satisfaction. On January 27th the King desired:—“Before sentence be given that I may be heard in the Painted Chamber before the Lords and Commons.” This request the Court refused on the ground that it tended to further delay.*)

King: Sir, I know it is in vain for me to dispute; I am no sceptic to deny the Power that you have; I know that you have

power enough; Sir, I confess I think it would have been for the Kingdom's peace, if you would have taken the pains for to have shown the lawfulness of your Power; for this delay that I have desired, I confess it is a delay, but it is a delay very important for the Peace of the Kingdom; for it is not my person that I look on alone, it is the Kingdom's welfare, and the Kingdom's peace. . . .

(The King is not reported to have put further questions to the Court. The Lord President addressed him at some length on the subject of his alleged crimes in failing to call, and in subsequently dissolving, Parliament, comparing him to the "Roman tyrant, Caligula, that wished that the people of Rome had had but one neck, that at one blow he might cut it off." . . . "Whether you have been," he said, "as by your office you ought to be, a Protector of England, or the Destroyer of England, let all England judge, or all the world that hath looked upon it." The Lord President also spoke of "Murder which is laid to your charge. All the bloody Murders . . . which have been acted or committed in these late wars" . . .)

King: I would desire only one word before you give Sentence; and that is that you would hear me concerning those great imputations that you have laid to my charge.

Lord President: You disavow us as a Court; and therefore for you to address yourself to us, not acknowledging us as a Court to judge of what you say, it is not to be permitted. . . . Sir, we have given you too much liberty already, and admitted of too much delay, and we may not admit of any farther. . . .

(The Lord President commanded the sentence to be read. This having been done, the report continues: "Which charge being read unto him, as aforesaid, he the said Charles Stuart was required to give his answer: But he refused so to do; and so expressed the several passages of his Trial in refusing to answer. For all which Treasons and Crimes this Court doth adjudge

That the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a Public Enemy, shall be put to death by the severing of his Head from his Body.”

The Court rose, and the sentence was carried out in Whitehall on January 30th, 1649.

II

A JUDICIAL CROSS-EXAMINATION BY LORD CHIEF JUSTICE JEFFREYS

IN August 1685, Alice Lisle, commonly called Lady Lisle, an old lady of over seventy, was tried for high treason before Lord Chief Justice Jeffreys. The charge against her was that she had entertained and concealed in her house, Moyles Court, one George Hicks, knowing that he had been with Monmouth's army at the battle of Sedgemoor.

The principal witness (according to the prosecution, a very unwilling one) was James Dunne, who, it was alleged, had, as a go-between, arranged for the reception of Hicks in Lady Lisle's house. The exact details of Dunne's movements, and his precise actions in the matter, are of no great interest to-day, but the language addressed to him by the Lord Chief Justice is so remarkable that some part of it at least must be cited: for example—

Lord Chief Justice: Now mark what I say to you, friend, I would not by any means in the world endeavour to fright you into anything, or any ways tempt you to tell an untruth, but provoke you to tell the truth, and nothing but the truth, that is the business we come about here. . . . Consider that the Great God of Heaven and Earth, before whose tribunal thou, and we, and all persons are to stand at the last day, will call thee to an account for the rescinding his truth, and take vengeance of thee for every falsehood thou tellest. I charge thee, therefore as thou wilt answer it to the Great God, the judge of all the earth, that thou do not dare to waver one tittle from the truth, upon any account or pretence whatsoever: for though it were to save thy life,

yet the value of thy precious and immortal soul is much greater, than that thou shouldest forfeit it for the saving of any the most precious outward blessing thou dost enjoy; for that God of Heaven may justly strike thee into eternal flames, and make thee drop into the bottomless lake of fire and brimstone, if thou offer to deviate the least from the truth, and nothing but the truth. . . . I tell thee God is not to be mocked, and thou canst not deceive him, though thou mayst us. But I assure you if I catch you prevaricating in any the least tittle (and perhaps I know more than you think I do; no, none of your saints can save your soul, nor shall they save your body neither) I will be sure to punish every variation from the truth that you are guilty of.

Now come and tell us, how you came to be employed upon such a message, what your errand was, and what was the issue and result of it?

(Thus encouraged, Dunn deposed as to the arrival of Hicks at Moyles Court and as to his contact there with Carpenter, the bailiff. With some asperity the Lord Chief Justice pursued the matter.)

Now prithee tell me truly where came Carpenter unto you? I must know the truth of that; I would not terrify thee to make thee say anything but the truth, but assure thyself I never met with a lying, sneaking, canting fellow but I always treasured up vengeance for him; and therefore look to it that thou dost not prevaricate with me, for be sure thou wilt come by the worst of it in the end.

Dunne: My Lord, I will tell the truth as near as I can.

(A question arose at this point as to whether Carpenter, the bailiff, or the witness Dunn, had unlatched the stable door, and fed Dunn's horse with hay from the rack. Dunn's evidence as to this did not satisfy the judge.)

Lord Chief Justice: Why thou vile wretch, didst thou not tell me just now that thou pluckedst up the latch? Dost thou take

the God of Heaven not to be a God of truth, and that he is not a witness of all thou sayest? Dost thou think that because thou prevaricatest with the court here thou canst do so with the God above who knows thy thoughts? And it is infinite mercy, that, for these falsehoods of thine, he does not immediately strike thee into hell! Jesus God! . . . Did you not tell me that you opened the latch yourself and that you saw nobody else but a girl? How dost you offer to tell such horrid lies in the presence of God and of a court of Justice?

(After some further evidence on these points the Lord Chief Justice observed—"Thou art a strange, prevaricating, shuffling, snivelling, lying rascal."

Jeffreys spared no efforts in trying to get admissions from Dunne that he, Dunne, had made it clear to Alice Lisle that Hicks had taken part in Monmouth's rebellion. Dunne maintained that Mrs. Lisle had only been concerned as to whether or not Hicks was a nonconformist.)

Lord Chief Justice: Why, dost thou think, that after all this pains that I have been at to get an answer to my question that thou canst banter me with such stuff as this? Hold the candle to his face that we may see his brazen face.

Dunne: My Lord I am so baulked, I do not know what I say myself. . . . I am quite chittered out of my senses, I do not know that I say: (A candle being held still nearer his nose).

Lord Chief Justice: But to tell the truth would rob thee of none of thy senses, if ever thou hadst any. . . .

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One final example of Jeffrey's judicial utterances in this case may perhaps be quoted. After Dunne had contradicted himself in some particulars, the Lord Chief Justice exclaimed: "Jesu God! That we should live to see any such creatures among mankind, nay, and among us too, to the shame and reproach be it spoken of our nation and religion. . . . I pity thee with all my

soul and pray for thee, but it cannot but make all mankind to tremble, and be filled with horror, that such a wretched creature should live upon the earth. . . .”

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Ultimately, Dunne's admissions, coupled with other evidence, resulted, despite some hesitation on the part of the jury, in the conviction of Alice Lisle, who was beheaded on September 2nd, 1685, in Winchester market place.

III

THE TICHBORNE CASE

1. *The Claimant Cross-examined*

THE case of *Tichborne v. Lushington*, which was heard by the Chief Justice of the Common Pleas, was opened on May 10th, 1871, and lasted for one hundred and two days before the jury intimated that they desired to hear no further evidence. This meant that the Claimant, who represented himself to be Roger Charles Tichborne, heir to the baronetcy and to the Tichborne estates, had completely failed to establish his claim. He was subsequently tried for perjury, and convicted after a trial lasting one hundred and eighty-eight days. He was sentenced to fourteen years penal servitude.

The true Roger Tichborne was lost at sea in 1854. His mother, Lady Tichborne, always believed that her son would return, and it was probably due to an advertisement which she caused to be published in 1865, that a butcher known as Thomas or Tom Castro, living in the small town of Wagga Wagga, in New South Wales, decided to pose as the lost Roger. The full story of his return to England, of his "recognition" by Lady Tichborne, of his legal action, and of the vast public excitement caused by his claim, is set out in Lord Maugham's fascinating volume, entitled *The Tichborne Case*.¹ For our purpose it is only necessary to say that the one vital matter at issue was this—was the Claimant, a man of enormous size, weighing over twenty stone, the Roger Tichborne who, as a slender young man, sailed for Valparaiso in 1853? Now, Roger Tichborne had been born in France, and lived in Paris till he was sixteen. He was then sent to Stonyhurst College, where he spent three years, and was shortly afterwards gazetted a cornet in the 6th Dragoon Guards,

¹ Hodder & Stoughton, 1936.

better known as the Carabineers. It was at this time that he fell in love with his cousin, Kate Doughty; but, owing to parental opposition on her side, no definite engagement took place. Roger sent in his papers, and decided to travel in distant lands. He was never seen in England again.

The action *Tichborne v. Lushington* was set down by the Claimant, posing as the lost Roger. In that action he was claiming the Tichborne family estates. The function of the Court was to determine whether his claim was made out. It had therefore to decide whether or not the Claimant was in fact Roger Tichborne.

The respective leading counsel were—for the Claimant, Serjeant Ballantine and Mr. Hardinge Giffard, Q.C.: for the defendants, Sir John Duke Coleridge, Solicitor-General (afterwards Lord Coleridge), Mr. Hawkins, Q.C. (afterwards Lord Brampton), and Sir George Honeywood, Q.C. The presiding judge was the Chief Justice of the Common Pleas, Sir William Bovill.

Of all the vast array of witnesses called by each side, the most important was, of course, the Claimant himself, and no part of his evidence-in-chief was more definite than his assertion that he had been educated at Stonyhurst. His cross-examination on this issue makes interesting reading. Some who read it to-day may well feel surprised that it did not there and then bring his case crashing to the ground. It shall speak for itself.

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FROM THE CROSS-EXAMINATION OF THE CLAIMANT BY THE SOLICITOR-GENERAL AS TO CLAIMANT'S ALLEGED SCHOOL LIFE AT STONYHURST COLLEGE

The Solicitor-General: Whereabouts were your rooms in the college? I have a plan here. Perhaps you can tell me whereabouts were your rooms in the college?—Let me look at the plan.

No. I mean I can follow you. You can tell me what quadrangle, what staircase it was. At Oxford or Cambridge a man could tell his rooms, and I daresay at Stonyhurst a man could do the same?—I was on the left.

Whereabouts were your rooms?—At the left, at the back of the quadrangle.

At the back of what?—The back of the—

The Lord Chief Justice: At the back of what?—On the left going facing the college. It is on the opposite side at the back.

Mr. Sergeant Ballantine: It was a quadrangle.

The Solicitor-General: A quadrangle would have different staircases and doorways, and so on.

The Lord Chief Justice: He has not repeated the word “ quadrangle ”. You said “ quadrangle ”, did not you?

Mr. Sergeant Ballantine: There is no doubt he did.

The Solicitor-General: I thought so, and my learned friend thought so.

Mr. Sergeant Ballantine: The only question was whether he said quadrangle, or behind the quadrangle.

The Solicitor-General: All the colleges I have seen are much alike in that respect, staircases and doors. A man can easily tell where his rooms were, in the first or second quad in such and such a staircase, so many flights up, and the door to the right or left?—Yes, I could tell you.

Whereabouts in Stonyhurst College were the rooms?—They were on the left.

On the left?—Yes.

Is there more than one quadrangle?—What do you mean by quadrangle? You may have a different meaning.

You used it, you know?—Yes.

What did you mean by it?—I meant a staircase, and on that wing of the house.

The Lord Chief Justice: What do you say?—I meant that wing of the house, that side of the college.

The Solicitor-General: I meant a staircase at that side of the house to be a quadrangle.¹ Do you really mean to say you do not know the meaning of quadrangle?—I mean to say I

¹ This is obscure: there may have been a mishearing.

am explaining to you where it is, and you will not understand it.

Excuse me, you were asking me what I mean by quadrangle. You used the word, and I asked you what you meant by it; and you told me a staircase at the back of the house. Do you really mean to say you do not know what a quadrangle means; you, a Stonyhurst man? Surely you can tell me what a quadrangle is?—It is a part of the building.

It is a part of the building, so is a door-post. But what is a quadrangle? You were at Stonyhurst three years, surely?—I am not going to answer such insolent questions.

Such what?—Such insolent questions.

The Lord Chief Justice: But are you aware that you asked the Solicitor-General what he meant by quadrangle? It was your question, you know, at first?—I beg your pardon. The Solicitor-General made use of the word first.

The Solicitor-General: I beg your pardon.

Mr. Sergeant Ballantine: No.

The Lord Chief Justice: However, the question is, what do you understand by the word quadrangle?—A quadrangle is a part of a building, my lord.

The Solicitor-General: What part of a building?—Why, the part of it that goes round (describing with his hand) would mean—

The Lord Chief Justice: A part of it what—if you will repeat what you said?

The Solicitor-General: Did you say a quadrangle went round?—No, I did not say that.

What does it mean?—Quadrangle would mean part of a building.

So does a door-post, as I have explained to you already. What I want to know is what part of a building a quadrangle is. You were at Stonyhurst three years?—Yes, you have said that about a dozen times.

I ask you whether you can tell me what a quadrangle is. Can you?—No, really I don't know what you mean by a quadrangle.

Really, you do not know what I mean by a quadrangle?

The Lord Chief Justice: Is that what you say?—Yes, that is what I said.

Did you ever go to the Seminary at Stonyhurst, or near Stonyhurst?—The Seminary?

The Seminary?—Do you mean the cemetery?

No, I mean what I say. I do not mean the cemetery. I mean the Seminary—what I said. Did you ever go to it?—I do not know it by that name.

You do not know it by that name?—Do you mean on the bank of the Otter? Do you mean the separate building away from the college?

I asked you whether you ever went to a Seminary at Stonyhurst, or near Stonyhurst?—I might have done. I have no recollection of it.

Did you?—I have no recollection.

I know you might. Did you, is my question?—I do not know what you allude to, not by that name.

You never did know any place under that name?—I have known lots of places under that name.

I mean at Stonyhurst—a place distinctly called the Seminary?—Yes, the Seminary.

Was there ever such a place at or near Stonyhurst you ever went to? You may not have gone to it?—I do not think I did.

The Lord Chief Justice: Keep to the question separately,—whether he knows such a place.

The Solicitor-General: Do you know such a place as the Seminary?—I do not know it under that name.

You never went to such a place?—I tell you I do not know it under that name.

You say as far as you know you never went to such a place?—
No.

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Surely you can tell me. You were going on to be a young man, and cannot tell me what book you read at Stonyhurst the first year—surely some one book, just one. I do not ask for many. I am not unreasonable—just a little book?—I do not think of one just at the moment.

Just try. You say you think you read modern history the first year. What modern history did you read? “Mrs. Markham” or “Mangnall”, or what?—I do not remember the name.

Cannot you remember really any single book that you read?—
No, I do not.

• • • •
You say that, in your first year, you did the elements of grammar and spelling, and a little history and a little arithmetic, which is the same as French arithmetic. What else did you do? What was your college course? It hardly represents three years of college course?—You mean during the whole time?

Yes? What lectures? What did you do? What lectures did you attend?—I attended lectures in Hebrew, Latin and Greek.

Hebrew, Latin and Greek?—

The Lord Chief Justice: Greek, did you say?—Yes.

The Solicitor-General: I am afraid I cannot test you in Hebrew. Can you read Hebrew now?—Not a word of it.

Is there any difference (I do know as much as that) in the reading of Hebrew from the reading of any other language?—
A great difference.

What?—I cannot explain to you what it is.

Is there any physical difference—any external difference?—
I am not speaking of it—to learn it as a language.

I mean reading?—I do not mean as a language; I mean the different phrases.

Hebrew phrases?—Yes.

Before you learnt Hebrew phrases, I suppose you learnt the Hebrew alphabet?—Very likely I did; I do not remember.

Before you can read a phrase, you must read the letters in which a phrase is written?—Just so.

Did you learn the Hebrew alphabet?—I paid very little attention to any of it.

Did you learn the Hebrew alphabet is my question?—I do not remember whether I did or not.

Surely you can recollect whether you learnt the Hebrew alphabet or not?—I do not remember whether I learnt the whole alphabet or not.

Whether you learnt the Hebrew alphabet or not?—Yes.

Did you ever read a phrase in Hebrew?—I do not know I ever read one. I know I was studying it for some time.

Surely if you studied it for some time you must have got as far as the alphabet?—No doubt I did learn it.

I mean the alphabet is not very far in a language. You suppose you had. What was the first letter of the Hebrew alphabet?—I have no recollection.

Cannot you tell me, if you studied some time in it—cannot you tell me any marked difference in reading Hebrew from the reading of English or Latin or French?—No; I have no recollection of the Latin or Greek either.

Which way is it read; do you know? Do you know what way Hebrew is read?—I have no recollection whatever of it.

That you cannot tell. My own acquaintance with Hebrew certainly is elementary; therefore I cannot go very much deeper. You never got so far as to ascertain it was read from right to left instead of left to right?—I do not remember that.

You learnt Greek?—Yes, some portion of Greek.

A portion of Greek. Greek is a large subject?—It was very little. Did your studies in Greek go as far as the alphabet?—I do not remember how far they went.

If they did not go as far as the Greek alphabet, they did not go very far?—When I first went there I was not like an ordinary scholar who was prepared for it. I went unprepared, and that made a great difference.

Everybody must make a beginning. Did you learn the Greek alphabet?—Probably I did.

Did you ever get so far as to read a phrase in the Greek testament?—Not to read a whole phrase, but to understand some of it.

Not to do what?—Not to read a whole phrase.

Could you read Greek at that time?—Yes, I think I could make out a sentence.

I will not ask you to construe. Do you think you could read the first verse of the first chapter of St. John, now?—I am quite certain I could not.

Could not even read the Greek letters?—No.

Does any single Greek word now linger in your memory?—Not one of any description. I do not think I have ever thought of it.

Did you get so far as the articles?—I do not recollect how far.

Do you recollect the Greek word “and”? Matthew, Mark, Luke and John. Could you give us the “and” in Greek?—My recollection is gone entirely.

Could you not give me “and” in Greek?—I am not going to do anything of the kind.

You have lost it entirely, have you?—Entirely.

The Hebrew and Greek, and, I think, you said Latin?—Yes.

Did you get on better in Latin?—I believe I went further in Latin than anything else.

Did you learn the Latin alphabet?—Yes, of course, I should have to do that.

Could you read Latin?—I believe then I could.

Do you think you could read me a line of Latin now?—I am quite certain I could not.

How far did you get in Latin?—Really, I do not remember how far I got in Latin.

Did you read any Virgil?—I do not remember how far I got.

Cæsar. Did you ever do a bit of Cæsar?—I do not remember, I tell you, how far I got.

Do you recollect whether Cæsar was written in verse or prose?—No, I cannot.

Are you quite sure? Did you ever do any Cæsar?—I might have done. I tell you I have no recollection.

I know you might, what I want to know is whether you did.

Did you ever do any Cæsar?—I do not remember whether I did or not.

Is Cæsar a Latin writer or a Greek? Do you know? What is your recollection of it? Perhaps you do not remember?—I do not. But I should think he was Greek.

That was the Stonyhurst edition, I suppose?—I cannot say whether it was or not.

Did you ever hear of a menstruum?—Menstruum?

That was my word. Did you ever hear of that?—No, I think not. I have no recollection of it.

You have no recollection of a menstruum? It does not remind you of anything—menstruum?—No, I do not think it does remind me of anything.

Cannot you tell me what a menstruum is?—No, I cannot.

As bad as a quadrangle. Have you no idea what a menstruum is at Stonyhurst?

The Lord Chief Justice: He did not say he did not know what a quadrangle was. He told you what he believed it to be.

The Solicitor-General: I did not say he did.

The Lord Chief Justice: His answer to this is, he does not know what a menstruum is. His answer to the quadrangle was,

he did not know what it was, but he gave you what he understood it to be.

The Solicitor-General: I am corrected.

The Lord Chief Justice: I mean it is so.

The Solicitor-General: There is a great difference, no doubt.

Can you tell us what a menstruum is?—No, I do not recollect what a menstruum is.

Did you ever hear of it?—Yes, I fancy I have heard the name before.

Where do you fancy you heard it?—I do not know, I am sure.

In France or England?—I do not know I tell you.

Cannot you really? Have you no idea? Cannot you help me to a menstruum? Did you ever yourself, now, do you think, figure in a menstruum? You do not seem to know what a menstruum is?—I do not.

Did you ever yourself take part in a menstruum, do you recollect?—No, I do not.

You do not know what it is in fact at all. Should you be very much surprised to find that Roger Charles Tichborne construed a good deal of Cæsar, with perfect propriety, at a menstruum at Stonyhurst, which is a monthly examination? —I should not be at all surprised.

Do you recollect doing it?—No, I have no recollection of it.

Do you recollect a menstruum now?—I do not know what you mean by a menstruum.

I have told you, a monthly examination. Who, according to your recollection, prepared you for your construing Cæsar at a menstruum, if you think that would not be unlikely, the Greek author whom you have spoken of?—I do not remember who it was.

Do you recollect whether it was in Latin or Greek that you construed Cæsar at the menstruum?—I have no recollection of it.

Did you do any other Greek or Latin author?—I have no recollection of what I did.

Is Virgil Latin or Greek—is he prose or poetry?

The Lord Chief Justice: One question at a time.

The Solicitor-General: Virgil—What do you say to Virgil?—I have no recollection.

You have no recollection of Virgil at all. Now just look at that (*a book was handed to the witness*). Did you ever hear of Virgil?—No doubt I have.

Who is he?—I do not know. I have no doubt I have heard of it.

What is he?—Is he a general, a statesman, or what? What is he? What is Virgil?—I told you just now I have no recollection.

You totally forget now: you have no recollection. Do you know what he wrote about, geography or what?—No, I have no recollection whatever, never thought of it from that day to this, I am sure.

Was he a Greek or Latin writer. Do you know?—I do not know.

Did he write verse or prose?—I do not recollect. My recollection is entirely gone.

Just look and see if you ever saw that book before. Did you ever see that book before?—I really could not say whether I have seen it before.

Open it. It will not hurt the inside. Look at the inside. What does he look like? By the look of it you have got the beginning or preface. Turn to the middle part of the book, where the substance of it is.—I do not want to look at it. You asked me to do so.

Just look at the middle?—I will look at the middle.

What does that look like? Did you ever see it before?—I do not know. I could not say I ever saw it before.

Could you read a line of it?—I am not going to attempt it.

The Lord Chief Justice: Is it Greek, Latin, or Hebrew?

The Solicitor-General: What is it? Greek, Latin, Hebrew, or what?—It appears to me to be Greek. I told you before I could not tell Greek from Latin. I do not profess to do it.

The Lord Chief Justice: I do not know what it is.

The Solicitor-General: It is a Delphine Edition of the Works of Publius Virgilius Maro. (*The book was handed to his lordship.*)

It looks to you like Greek: in short, it is Greek to you. Did you learn any mathematics?—Yes.

You did learn mathematics. That is something. How far did you go in mathematics?—Really, I cannot say. It is nonsense asking me. My recollection does not carry me back.

What?—It does not carry me back how far I went in anything.

What mathematics did you read?—I have no recollection whatever.

What is your notion of mathematics? What do you mean by mathematics? You say you learnt them. What did you learn?—It is so many years ago, I do not remember. I have entirely forgot what I learnt.

When you say mathematics, what do you mean by mathematics? What are mathematics about? What did you learn? I will not ask how far you went, but what sort did you learn in mathematics?—I have no recollection what I learnt.

You have no recollection what you learnt?—No.

Is it the same thing as chemistry?—No, I should hardly think it was. I will not answer, because I have no recollection of it.

You can tell me whether it is the same thing as chemistry; is it the same thing? Is chemistry a branch of mathematics?—I should think not. My recollection will not serve me, and therefore I cannot swear.

You may not be able to do either mathematics or chemistry; but is chemistry a branch of mathematics, or is mathematics a branch of chemistry?—Neither one nor the other; chemistry is a science by itself.

What is mathematics?—I have no recollection.

With whom did you read mathematics?—I am sure I do not recollect.

What book in mathematics did you ever read?—I have not the slightest notion: I have not the slightest recollection.

What is mathematics? Is it a language, or what? Greek or Latin, or Hebrew or French, or what? What is it written in? Can you tell me?—No, I cannot.

You know who you read it with?—No, I do not remember.

You do not remember who you read it with?—No.

Did you ever read Euclid?—I do not recollect whether I did or not.

Had Euclid anything to do with mathematics or not?—Certainly not; it might be; I have no recollection.

Has algebra anything to do with mathematics?—I have no recollection. That is why you are taking an advantage of me.

Taking advantage of you! Can you tell me whether you did in fact read any Euclid or not?—No, I cannot tell. I believe I did, but I could not answer.

You believe you did?—I believe I did. I have no recollection of it now.

You say it has nothing to do with mathematics. What is it written in; what language?—I have not the slightest recollection of it. I have never thought of it from that day to this.

Did you ever hear of the Asses' Bridge?¹—I do not recollect.

Did you ever try to get over it? Do you know what it is?—No, I do not.

¹ The fifth proposition of Euclid; known as the *pons asinorum*.

Where would you look to find the Asses' Bridge?—(No answer.)

Did you ever try to cross the Asses' Bridge?—I do not know. Probably I have.

Did you—say yes or no?—I tell you I have no recollection of it.

Did anybody try to help you over the Asses' Bridge? Do you recollect whether anybody tried his best to help you over the Asses' Bridge? Did you ever make gallant efforts, as many of us do, to get over it?—I have no recollection of it.

You do not know what it is?—I have no recollection.

Do you know whereabouts it is—how far from Stonyhurst?—I can put up with all your insulting.

Do you know it under its Latin title? Perhaps that would bring it home to you—*pons asinorum*?—I have no recollection of it.

You cannot recollect anybody doing his very best to help you over that structure?—I should advise you to joke a little less over this.

Did you learn any chemistry—you remember that, surely?—To the best of my recollection I believe I did, but I have no recollection what it was.

Cannot you tell me even as much as that, whether you learnt a little bit of chemistry at Stonyhurst?—No, I cannot. I know I learnt some.

What is chemistry about?—It is about chemistry, of course.

History is about history, Greek about Greek. That does not help us much. What is chemistry concerned about?—Chemistry is different herbs and different poisons—mixture of medicines.

Mixture of medicines?—Not only medicines, but the substance of them.

What is served out in a chemist's shop—the things you get in a chemist's shop?—I think a dose of it would do you good.

What does A.M.D.G. mean?—I do not know, I am sure. Was not A.M.D.G. put up in every public room and almost every private room in Stonyhurst? Was not it put on every bit of paper, every exercise, every book—everything you used or did at Stonyhurst?—Well, if you say it I am not going to swear to it.

But I ask you. You are a Stonyhurst man and I am not. Was not A.M.D.G. put on every exercise and every book that was used at Stonyhurst?—Well, I cannot say, for I do not remember whether it was or not.

Have you the least idea what it means?—I have not given it a thought.

Eh?—I have never given a thought to it.

You really mean to say you have no idea what A.M.D.G. means—you a Stonyhurst boy for three years?—I mean to say it does not flash across my memory what it was.

That you really mean to say. Do you mean to say you have forgotten that A.M.D.G. was put upon all the books, and at the head of every exercise and piece of work that you did on paper at Stonyhurst?—You will vouch that to be true, of course.

Have you forgotten? Is it the fact, I will ask you, that A.M.D.G. is printed upon every book and stands at the head of every exercise and piece of work done at Stonyhurst? All I can say, if it is, I do not recollect it.

That you say you do not remember; that A.M.D.G. is printed on all the books you used, and every exercise or whatever you had to do, upon everything you used and had to do at Stonyhurst. You say, if that is true, you have entirely forgotten—have you?—I do not remember that it is so.

Now I will tell you what it means, and you will see whether you can remember it then.

The Lord Chief Justice: You are not entitled to tell him. You may ask him whether it means so and so. It comes to the same thing, but you may as well be regular.

The Solicitor-General: Does not A.M.D.G. mean *ad majorem dei gloriam*?—Yes, there is no doubt of it.

What does that mean in English? You, a Stonyhurst boy of three years, can tell me that?—There is God's glory in it, but I cannot tell you what the first is.

The two last words are “God” and “glory”. What are the two first?—I do not know.

Look at the bottom of that. What are the letters at the bottom printed in large capitals?—L.D.S.

What does that mean—is that right?—Is that right?

L.D.S.?—It looks very much like—really I do not remember what it means.

That you do not know either. Were not these letters printed on almost all the printed papers and bills and matters that were printed at Stonyhurst?—Not to the extent that you try to represent.

Then you recollect that it was printed on many. You say not to the extent that I try to represent. Then it was printed to some extent was it?—The top was.

The bottom one I am speaking of now?—No, I have no recollection.

Do you mean to say you never saw those letters?—No; I did not say anything of the kind.

Attend. Do you mean to say these letters were not printed at the bottom of papers and letters which you had printed in Stonyhurst?—I say they might have been.

Were they not?—I do not know about it.

What do they mean, L.D.S.?—I forget it now.

Did you ever know?—Most undoubtedly.

What?—I have no doubt I have forgotten now.

But surely you can recollect, if you once knew a thing you admit now you often have seen before, surely you can tell me now what L.D.S. means?—When did I admit?

You said it was very common at Stonyhurst?—You said that.

And you agreed to it?—No.

What do you say, was it not very commonly printed on the papers at Stonyhurst? What is your recollection on the subject?—Well, I do not recollect the L.D.S.

But you did not recollect this either?—No, I did not.

What is your recollection about this?—I have no recollection about it.

Does it not mean *Laus Deo Semper*? What does that mean in Latin, or is that Latin, French, or what?—Well, it would be the “Laws of God for ever.”

“The laws of God for ever,” just so?—Or permanently.

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Did you smoke a good deal there?—Yes, I used to smoke a good deal.

Where?—When did I smoke?

Where?—Do you mean when did I smoke?

Yes?—Whenever I got the opportunity.

I asked you where you used to smoke—anywhere where you could get an opportunity. Was it forbidden; was it against the rules, or did they let you smoke?—They let us smoke.

The Lord Chief Justice: Was it permitted?—Yes.

The Solicitor-General: Smoking was allowed at Stonyhurst?—Smoking was allowed.

Do you really mean that?—Yes, I mean that.

To any extent did you use to smoke?—In the grounds.

What sort of hedges were there at Stonyhurst; high hedges or not, in the grounds, or low clipped hedges?—There were hedges at the back of the grounds.

I want to know whether they were high hedges, or low clipped hedges?—I should think that depended on the time of year.

You cannot tell me whether the hedges at Stonyhurst were high or low?—They was usually kept high.

Now, really you say it was allowed. Did you ever smoke behind the hedges?—Yes, frequently.

What happened to the hedges, do you remember?—No; I cannot remember anything happening.

You cannot tell me? Smoking was allowed. Were not the hedges cut down quite low, so that you should not smoke behind them?—Not to my remembrance.

That you swear?—That I swear.

In consequence of you being found smoking behind the hedges at Stonyhurst, were not the hedges at Stonyhurst cut down short?—I think not.

Will you swear?—It is a hard thing for me to swear.

It is my duty to be hard?—I did not say anything about your being hard. Goodness knows you cannot be harder than what you are.

I am glad to hear it. Was it cut down?—I do not remember whether they were cut down or not.

Were they cut down short because you smoked behind them—you and others?—I should think not; no.

Will you swear not? I have no right to say you cannot forget, but, I should think, you can hardly forget?—I should hardly know why hedges were cut down.

I asked you were you not found smoking behind the hedges, and, in consequence, the hedges were cut down low?—I was found smoking wherever I had an opportunity of doing it.

Were you not found smoking behind the hedges, and were they not cut down too low, so as to afford you no shelter?—I think not.

Will you swear not?—No; it is impossible for me to swear to a thing like this.

The Lord Chief Justice: “I was found smoking anywhere where I had an opportunity of doing it?”—Yes. I never found any great objection to smoking in the grounds.

The Solicitor-General: I ask you this about the hedges, and you will not swear it was not so. Do you recollect anything happening in a wood at Stonyhurst?—A wood at Stonyhurst?

Yes, a wood at Stonyhurst, connected with smoking?—No, I did not.

Nothing at all? Did you do anything in a wood, you and others, about smoking?—I do not remember doing anything in particular.

You do not remember what?—I do not remember doing anything in particular.

You do not remember anything particularly?—Yes.

Did you do anything generally in a wood about smoking? I am not asking about anything else. Did you do anything at Stonyhurst? Surely you will not swear the hedges were not cut down to prevent you being sheltered behind them when you smoked. Did you do anything in the wood about smoking, you and others?—Not that I remember.

Cannot you remember anything you did about smoking in a wood?—No.

Did not Roger Charles Tichborne, and others, build a cabin with their own hands in a thick wood near Stonyhurst for the purpose of going and smoking there? Is it true? If it is true you cannot have forgotten it. Is it true that you did?—You do not mean a wood at Clitheroe.

I mean a wood at Stonyhurst?—I do not remember that such was the case.

Did you ever build a cabin in any wood, to go and smoke?—Not a cabin.

Anything, a house, or shed in a wood, to go and smoke? I do not remember doing it there.

Did you do it anywhere, is what I say?—I have done it hundreds of times for the sake of the fun.

I mean while you were at Stonyhurst?—I know what you are speaking of. You said anywhere afterwards, and if you lead me away—

I mean anywhere while you were at Stonyhurst?—I tell you I do not remember doing it.

Will you swear you did not? Is it untrue what I suggest to you? It might not be untrue, but I do not remember it. Should you recollect what happened to the cabin?—No, inasmuch as I cannot recollect the cabin, I could not recollect what happened to it.

I asked you whether you and others did not build a cabin, the hedges being cut down so that you could not smoke behind them, whether you did not go with others and build a cabin in a wood at Stonyhurst, and whether Father Rigby did not find it out, and pull it down. Either Father Brownhill or Father Rigby?—It might have been the case.

Of course it might have been, but was it?—I do not remember. You do not remember?—No, I do not.

Did you not one day light a fire in the cabin, and did not the smoke go up, and was not it seen from Stonyhurst, and bring down those gentlemen on you, who found you smoking, and they had the cabin pulled down. Is it true or not, or have you forgotten that it is true? Is it true or not?—You mean if I was there at the time. You said so, but I do not believe it was true.

Did the thing happen?—It might and it might certainly not.

Did the thing happen?—I do not think it did.

Will you swear it did not?—I will not swear it did not happen.

Had you forgotten it?—I do not even remember it now.

2. *Miss Braine Cross-examined*

Before leaving the evidence in the Tichborne Trial it may be of interest to set out the cross-examination of two witnesses other than the Claimant himself; one is Miss Hannah Mary Braine. Miss Braine was called to give evidence in support of the Claimant's case, and, as Lord Maugham says,¹ her cross-examination shows how little the Solicitor-General got out of her beyond evidence of her peculiar mentality.

¹ Op. cit., p. 190.

During parts of 1849 and 1850 Miss Braine was governess to Miss Kate Doughty, and in that capacity met Roger Tichborne, who, as previously mentioned, was courting her pupil. In her evidence-in-chief Miss Braine replied to Sergeant Ballantine's final question as to her opinion of the Claimant:

"I am as certain of him as I am of my own identity. I could as soon doubt one as the other. He is the same Roger Tichborne whom I knew in the year 1850."

The Solicitor-General set himself to test the accuracy of this very positive identification.

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CROSS-EXAMINATION OF MISS BRAINE BY THE SOLICITOR-GENERAL

You feel quite confident, do you?—Quite confident. Are you sure you did see him (Roger) as long as a week or ten days?—I have already answered his lordship that I could not swear to a day. That is my recollection, as far as it goes. My question is whether you are sure that it was as long as a week or ten days?—I have answered his lordship, and I cannot give any other answer.

You are now answering me?—I have said to the best of my recollection, a few minutes ago, I think, I cannot swear that it was not less than a week, and certainly not more than ten days.

About when in the year 1849, was it?—I do not know whether he came before the beginning of 1850, or after. I know he was there on his birthday, which I think is on the 5th.

That is not my question. What time did you yourself go there?—Somewhere at the end of 1849. I have no doubt of it.

What do you mean by the end; December, November, or October?—December, I think, I have no doubt of it. I will not swear that; I have no diary here that I can refer to.

Is that your impression?—That is my impression. I have no dates with me that I can refer to on the subject.

Have you a diary?—I have, but I have been moving about for years, and my books are locked up in various places.

This is an important matter. I thought possibly you might have refreshed your memory to see when you went to Tichborne?—I did not, I do not think I have found any date of the day when I went.

You might find when you were not there, and when you were there. Have you the means of giving us approximately when you went there?—I can only tell you towards the end of the year 1849.

Do not let me misapprehend you. May I take it by the end of the year 1849 you mean the month December?—Yes.

You did not go there before the month of December?—I think not really; I would not swear; I think not.

I want to get some definite time from you?—I am quite sure I was there in the beginning of the year 1850; that I can swear.

To the best of your belief you were not there before the month of December 1849?—To the best of my belief that is the case.

You were there?—I have no doubt of it as a fact.

You were there in the capacity of—you were giving assistance in education?—I was there as governess to Miss Kate Doughty; I am not at all ashamed of it, not in the slightest degree.

I thought you said otherwise?—I merely meant to show the kindness with which I was treated at the time. I was only reminded of it lately that Lady Doughty objected to my being called governess.

But you were there as governess to Miss Doughty?—Yes.

Were you teaching her French, or did she know French?—She understood French, and I was teaching her.

You understand French, no doubt?—Pretty well.

And can speak it?—And can speak it.

Fluently?—Fluently, people say.

I do not dispute it for a moment, I want to know—It is rather a trying position to be examined here on my own qualifications. I have generally left that to my friends.

What was he doing, was he fond of shooting and hunting, and such things?—I believe he was.

Did he spend his time in Tichborne with you much?—Not entirely, certainly.

I suppose he was out sometimes?—I suppose he was, I did not follow him.

Most part of the day?—A great part of the day.

Was he tired, and did he go to sleep, as men will do when they are tired, in the evening?—I really do not remember. I have no recollection of seeing him asleep.

Had you much opportunity of talking to him?—As much as one generally has with a visitor staying in a country house.

You were there as Miss Kate Doughty's governess. She was a little girl at that time?—Do you consider a girl of seventeen a little girl? I do not.

If you ask me, I do but I do not bind you to any opinion at all.

Did he come into the sitting-room to talk to you?—He did frequently.

Did he talk to you or to your pupil?—As far as I remember, he talked to everyone there.

There was no one there but you?—There were several people staying in the house.

But you did not give your lessons in public?—I do not remember stating that Mr. Tichborne came into the sitting-room where I was giving lessons.

Did he come into the room where you were giving lessons?—I do not remember he did; he may have done so.

He was out a good deal in the day?—I suppose he was, I really did not follow him.

Is it more than that?—I was about to say, but you interrupted me. There was a general sort of early tea in my sitting-room, to which many visitors in the house came.

Had five o'clock teas begun as far back as that?—I really do not remember whether it was five o'clock; I can only state the fact now.

There was a general tea in your room, and he came in for a cup of tea?—I do not remember whether he had a cup of tea.

Was that the time when you had a conversation with him?—I do not remember talking much to him, but at that time I heard him talking to others.

When did you talk to him at all?—At dinner I remember talking to him.

Did you sit next to Mr. Tichborne?—I sat next to him on one occasion. I particularly noticed the hands of which I was speaking.

You particularly noticed his hands did you?—I did.

Let us hear about the hands?—There were dimples on the knuckles; instead of the bone of the knuckle appearing as it does in most thin men's hands, there appeared to be dimples in his.

Dimples on the knuckles?—I did not say on the knuckles; I beg your pardon, I said where one generally sees the knuckles projecting I observed dimples.

He had knuckles and there were dimples on them?—I did not say so.

There were dimples where there would have been knuckles, if he had any?—I did not say that. That is quite a wrong version of what I said.

What did you say?—I said that where the dimples were—

Were the dimples inside or out?—When you have done bantering me I will give you a direct answer.

Let us have it?—I have repeated it twice that where one generally sees the knuckles projecting there were dimples on his hands, instead of knuckles.

Exactly, instead of knuckles, that is just what I said, “Where there would have been knuckles if he had any, there were dimples?”—I do not think I said that.

The Lord Chief Justice: Where there would have been projections of knuckles, you mean?—Yes, my Lord, but I do not say it was on every joint. I noticed them on some of them.

The Solicitor-General: Were his hands small and delicate hands, or large, lumpy kind of hands?—No, I do not remember anything peculiar about the size of his hands.

Nothing but dimples?—Nothing but dimples.

Has the claimant got dimples on his hands?—Sir William Ferguson will answer that question better than I can.

You can answer for Roger Tichborne; cannot you answer for the claimant?—I can, and I know now the cause which I did not know then.

Would you mind answering?—Not in the least.

Has he?—He has.

Dimples?—Dimples I explain, if in that way, but I hardly thought it fair for me to answer that, I know now the cause which I did not know then of that appearance.

What did you talk to him about, do you recollect any single topic of conversation that you had with Roger Tichborne?—At Tichborne?

At Tichborne.—Not any.

Not one?—Not one, I have not the least recollection of any particular topic of conversation, not the slightest.

No recollection?—Not the slightest.

A good deal of conversation passed between you?—Yes, I remember talking to him.

You cannot remember what you talked about?—Not a single thing.

Not a single thing?—Not to remember accurately.

Was he a man who could keep up a conversation with an educated lady like you?—I should not have tried to talk to him on any profound subject.

Did he play his part with you in conversation?—He was very shy and very awkward.

Did he say much at all, could you get at what was in him?—No; I do not think I could.

Then you do not know what was in him?—When you say could I get at what was in him, I conclude you mean at his whole character.

If you could not get at what was in him, you do not know what you could get at?—Exactly.

He was very shy, and very awkward, was he?—I thought so.

He did not talk French?—He may have, I do not remember.

To you, I mean?—No.

And as to his English, what should you have said of his English?—He had a decided French accent.

Decided?—A decided French accent.

Strong?—I really hardly know how to answer that question.

He had a French accent; I cannot define the degree of accent.

Did he talk English as a Frenchman talks English, as if it was a tongue foreign to him; as if he thought in French? You understand that, Miss Braine, thoroughly. Was he like a man thinking in French and expressing himself in English? Was that his kind of talk?—To a certain extent.

To a certain extent?—Yes.

I do not exactly know what you mean. Was that how you would describe his English?—No, I should not. You put the question to me, I therefore answered it in that way. I should not have described it in that way if I had been describing his language.

To a certain extent that was true?—Yes.

You detected now and then phrases which you believe an Englishman would not have used?—Yes.

Now, you are quite certain that you did see him?—Quite certain.

And had these conversations with him?—Quite certain.

Such as they were?—Yes.

Was he musical?—He played on the French horn.

Pretty well?—I do not play the French horn myself, therefore I am no judge.

You say you do not play the French horn yourself, I do not know whether you sing yourself?—No, I do not.

Possibly you know whether a person sings well, although you do not sing yourself?—I should know better than I should the French horn.

Cannot you tell?—No.

Did he play from notes?—I have no recollection of that—

Mr. Sergeant Ballantine: Add what you were going to say?—He may have played in the sitting-room, I have no recollection of his doing so, or he may have played in his own room.

Did he sing?—Not that I remember.

Did he have a music-book?—I have no recollection.

Large music-books?—I do not recollect.

Do you know music yourself; can you read music?—Yes, very well.

Do you know whether he was a man capable of reading music?—I really do not know, I know he played the French horn; I do not remember anything as to his musical talents.

Did he play anything else?—I have no recollection of his having done so.

Was he fond of music, did he encourage music in the evening?—I really have no recollection of that at all.

No recollection one way or the other?—No, I have not; none whatever.

You do not recollect whether he was remarkably fond of

music?—I have no recollection except that he played the French horn.

You do recollect he played the French horn?—I do.

Whether well or ill you cannot tell?—No, I cannot.

When did he leave Tichborne? In 1849 or 1850?—In 1850, after the 5th, which was his birthday, but the day I am not sure about.

He was there, you say, on the 5th of January 1850?—Yes.

That you are certain of?—That I am quite certain of.

There can be no mistake about that?—I do not see how there can be.

That date is a date you have a good memory for?—I know it was his birthday; and I know he was there on his birthday.

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The further cross-examination as to the witness's identification of the Claimant as Roger Tichborne was as follows:—

In what is it that you say, as far as appearance is concerned; in what is it that you say he resembles the Roger whom you remember in 1849 or 1850?—I beg your pardon; I did not say “resembles.” I say he is the same Roger.

Well; I say, in what features or what appearance?—The eyes and brows, strikingly. The mouth, but much fuller.

The nose is fuller?—I did not say the nose.

I beg your pardon. What did you say?—I said “mouth.” It is fuller, from the face being fuller.

The face is what?—The face is fuller. All the lower part of the face is fuller.

The nose; how is that?—The nose seems to have recovered its original shape. When he came home I saw a slight alteration in it, because, I think, of the bones that have been taken out. As far as I can judge, it seems to have gone back to its original shape. It has recovered the fall which he had.

It has recovered the fall it has had?—I did not say “it,” I said “he” had.

I call the nose "it"?—Well, as the nose cannot fall without the man, I talked about the fall "he" had.

Mr. Sergeant Ballantine: What was it you really said? We all talk louder than you.—What I really said was that the nose seemed now to have recovered its original shape which had been slightly altered by the fall he had.

The Solicitor-General: Then he has got the same nose that Roger had?—I think so.

In fact, it is the same nose?—Undoubtedly.

Mr. Sergeant Ballantine: If it is Roger, I suppose it is.

The Solicitor-General: The eyes and the eyebrows, and the upper part of the face are strikingly like, are they?—Strikingly like.

Nobody who had seen the one could doubt, I suppose?—I will not say; with a slight glance, my opinion is, no one sitting and talking to him, who knew him before, could possibly mistake him.

If they had a good memory?—I do not think it requires a very good memory, when talking to him easily and naturally.

A "variable" memory?—Even with a "variable" memory. I beg your pardon, Mr. Solicitor; you are misrepresenting something I said. I must be allowed to correct myself.

Then if I am misrepresenting what you said about your variable memory for features, just explain.—

Mr. Sergeant Ballantine: If you have a chance, just explain?—What I meant by "variable" is, that if a face, for any reason, strikes me—if I am interested in the person—I do not forget that face, but I have not that memory which some people have for remembering every face I come into contact with.

Did Roger's face strike you?—It struck me for this reason, that I was interested in the family, and that I heard it much discussed and talked about.

Do I understand that all the faces of the Tichborne family were

very much impressed upon you?—I might not feel the same interest in every member of the family.

Did you feel a peculiar and singular interest in Roger?—From the circumstances, I did.

What were the circumstances that made you have so peculiar and singular interest in him?—Well, he was the heir to a large property. That has its weight in the world. The family has singular things connected with it which make the family interesting.

That would interest all the members?—I should think it would.

I mean it would make them all interesting?—I beg your pardon. I think the heir generally stands rather forward or prominent. Don't you think so? I don't know whether I am singular in my notion, but it strikes me so. He was the first-cousin of my pupil, to whom I was most sincerely attached. I do not wish to proceed further on that subject.

Mr. Sergeant Ballantine: Oh yes, proceed, madam. You have been asked the question; now finish it.—I heard a great many remarks from the friends of the family as to whether he was likely, at any time, to be her husband; and as I am very much attached to her that interested me in him.

The Solicitor-General: That interested you in him? That was a thing known in the family, wasn't it?—I beg your pardon—what was known? That I was interested?

No, not that you were interested, but that Roger and his cousin might possibly at some time or other marry?—I do not know whether it was generally known. I can only answer for the remarks made to me on the subject.

They were made by persons who either knew or suspected it?—I know nothing of what they knew or what they suspected. I simply know I heard such remarks.

And it was the topic of conversation among the members of the family?—It was talked of to me. I cannot remember

exactly who talked of it. I heard of it. I heard it discussed as to whether such a thing was likely to happen.

That led you to take a singular and peculiar interest in Roger?

—I do not think I said “peculiar”.

Well, we will drop the “peculiar”—I do not think I used the word “singular” either. I have no recollection of saying “singular”.

What did you say?—I cannot remember the words. If you will allow me to have a shorthand writer—oh! I see there is one—if you will allow me to refer to him I shall know, but I cannot remember what words I said.

Your memory for some things is “variable”.—I think I used an inaccurate word when I said “variable”, because it hardly implies what I meant. I have explained; I think you understand me, Mr. Solicitor.

I think you used the word “singular interest in Roger”.—I am not sure, really, whether I did or not.

Did the circumstances to which you have alluded lead you to take a singular interest in this young man?—It led me to take a great interest in him, I use the word “great”, which implies what I mean.

Did you ever talk to him about it?—Never.

Never talked of it at all?—Not to my recollection. I do not think I should have been likely to. I have no recollection of it.

This was the only time you saw him?—Before he went away during that week, if week it was.

Very well. Now you say that the upper part of the brow—the eyes and eyebrows—were singularly alike. Was there a falling lock upon Roger’s forehead?—There was.

That you recollect?—Perfectly, because I remember the way he had of jerking his head to throw the lock back, which was constantly coming over his eyes.

That is how you know it was falling, that he tries to throw it

back?—It impressed itself upon my mind. In fact, I have a faint recollection of laughing at him about it.
That you are certain of?—Quite certain.

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Does he speak now as a Frenchman, as if he had been brought up abroad?—I think he speaks as if he had been in the colonies for fourteen years, as he has.

But, you see, a man may have been brought up abroad, and yet go to the colonies for fourteen years. What I ask you is, whether he now speaks English as if he had been brought up abroad till the age of 18 or 19, or 16 or 17—16?—No, I think not. Occasionally I hear a French accent, and a quantity of French idioms still; the French idioms I hear repeatedly still.

You hear what?—French idioms.

Just give me an instance of a French idiom that he makes use of. You hear that repeatedly, as I understand?—I am not sure that I can. I have made no memoranda.

Cannot you recollect one?—No, I cannot at this moment. I can recollect mistakes in pronunciation at this moment which I can trace to the French.

Trace to the French?—Trace to his original French education, which to the multitude might simply appear bad English, but which I trace farther back.

Very well, now let us have one. Give us one.—One word, for instance, that occurred lately, and therefore I remember it, was that he said “mountainous”, which I trace to the “*montagneux*”, and not to be simple bad English.

Can you give me another?—He says “familier” instead of “familiar”.

I do not hear you?—He says “familier” instead of “familiar”, as we should pronounce it. It is the French “*familier*”, evidently still remaining.

The Lord Chief Justice: He says “familier”?—He says “familier”,

as a French person would. At least, he does not say “ier” in that way. It is a mixture of half English and half French. *The Lord Chief Justice*: What is the word he uses?—“Familier” is the word.

How have you heard him pronounce it?—I have heard him pronounce it “familier”; but there are many words of the same kind which do not occur to me now.

The Solicitor-General: Do you remember any more?—I do not remember any more. One never can when one is pressed; a common occurrence, I think.

May I suggest there may be various ways of spelling “worrit”?¹ Can you trace any of them back to the French?—No, I think it is purely Colonial.

Well, now persons “hanker” to see him, spelt like an anchor. Should you trace that to a nautical education, or to a Colonial, or to a French?—I beg you will not ask me to trace his words to their source. I am afraid the jury might be tired.

That would seem bad English to the multitude, as you say, but could you trace any French in that?—Well, now you put it to me, I think it would be. I have not thought of it, but I think it is a little confusion with the French “*ancre*”. I am much obliged to you for the suggestion.

The Solicitor-General: What do you say to the “respectable”. Is there a French touch in that?—Well, it will afford an opportunity for another laugh, but in this mixture of vowels I trace it very much to his French education, where he puts “ia” or “ie” where we should simply put a single vowel. It is really the French education hanging about him. That is my belief.

Only not yet completely worn off?—Not yet worn off.

¹ A reference to the peculiar spelling made use of by the Claimant in his letters, e.g., “sais” for says; “fue” for few; “a nuff” for enough; “a normous” for enormous.

3. *Cross-examination of Major-General Custance by Mr. Hawkins, Q.C.*

The cross-examination of one other witness in the civil action; this time by Hawkins, Q.C., is in part, set below.

Major-General Custance, C.B., who was Captain of the 6th Dragoon Guards when Roger Tichborne joined the regiment, gave evidence that he saw Roger when at headquarters of the regiment nearly every day, during three years, that he now found him wonderfully changed, but that he knew him by the peculiarity of his eye, his wrinkled forehead, and his general expression. His evidence ended with the words "My belief is that he is the man, most undoubtedly."

FROM THE CROSS-EXAMINATION OF MAJOR-GENERAL
CUSTANCE BY MR. HAWKINS, Q.C.

Now, as to his person. There is nothing about him which you can call little and wretched?—No, because he has grown enormously.

I mean it is the very reverse of the picture which you drew of him in Ireland as being a little, wretched, unwholesome-looking young man?—I do not know that anybody is likely to be so many years away and not to change.

Did you ever know such a change as you witness in the man whom you see before you?—No, certainly I never have.

But that was astonishing to you?—It was astonishing.

And you could hardly believe your own eyes, I daresay?—No. You did not believe them?—I did. On that particular point I was astonished.

. . . You found these two things so diametrically opposite to what you expect—height and body?—I found the height and body certainly different.

What about the face—bigger?—The face was fatter.

It was double the size of Roger Tichborne's?—Yes, as far as fat went.

As far as fat and cheek went?—Yes.

. . . Now let me ask you what sort of eyes he had.—I recollect he had a peculiar expression about the eye.

What was the colour of his eyes?—I think they were hazel, but I will not positively swear they were hazel.

If anybody told you that they were blue, you would not contradict them?—Most decidedly I would.

Suppose they told you black?—Then I should contradict them too.

Supposing they said brown?—That would be approaching hazel. I cannot speak to a very decided hazel, but that is the expression I should use if asked what colour his eyes were.

Now what sort of nose had he?—I cannot say.

The nose is rather a prominent feature?—Yes.

As we would say in law, a leading feature?—Yes.

Do not you recollect what it was like?—I cannot explain.

I do not want you to explain, but if you know the shape of it?—

I cannot explain the shape; there was nothing very decided about it one way or the other.

Was it aquiline?—Not very; I cannot say that it was decided aquiline.

. . . Was there anything about his ears?—No, I do not know anything about his ears.

Was there anything about the shape of his head—yes or no?—

I do not know that I could speak to the shape of his head.

Then, as to his features and the shape of his head, you only recollect that his eyes were, according to your judgment, hazel, but you will not swear whether brown; you do not know the sort of ears, or the shape of his nose or head?—

No, I recollect the eyebrows and his forehead, and I recollect a peculiar expression about the eyes.

What is the expression?—That is a difficult thing to explain, the expression of an eye.

What is the use of introducing it?—Every man may have an expression in his countenance that you cannot explain, every man has, more or less, some peculiarity.

When you say there is a peculiar expression, what do you mean by it?—I mean there was a peculiar expression in the eye.

. . . Cannot you give us a notion of what it was?—No, I cannot explain it.

. . . Did you ever see anybody without an expression in the eye?—I think everybody has an expression in the eye, more or less.

. . . Cannot you give me a notion of what you mean?—No, I cannot.

Now, except this peculiarity about the expression of his eyes, which you cannot give me a notion of, was there anything else?—There was the wrinkling of the forehead. I recollect that. A sort of movement of the brow which raised the skin of the forehead.

Have you seen that in a good number of persons?—I have seen it in others, certainly.

That is not a very extraordinary thing?—No, but I think it marks a man to a certain extent.

But it is a very common thing, is it not?—I cannot say. I have not seen any other man with it.

Then his hair; is the colour of his hair altered?—I think not.

Not a bit—not a shade?—I certainly do not think so.

Was the character of his hair the same?—Well, he did not wear it so long, of course not.

. . . Was it thin, lank hair plastered down?—It was straight hair certainly.

Straight, plastered down?—Rather plastered down.

Thin hair?—I cannot say it was very thin. I do not recollect sufficiently of the hair for that.

. . . Do you recognise anything about the hair (of the Claimant) which reminds you of the young gentleman who had brown hair cut short behind and straight and plastered down?—The hair—no, I never said that it did.

Is it not very unlike?—The colour of the hair is like; of course the way it is worn is unlike.

Excepting the colour, is it not very unlike?—Of course it is. Then you have told me so many things which are unlike; do I understand you, when you saw him in October as having recognised him from the twitching in the forehead and the peculiar expression of the eye you cannot describe—those are the two things which made you recognise him?—And he also had a peculiar manner.

. . . What was it?—I cannot explain to you the peculiarity of manner, or of any man's manner.

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Now I want this from you—was there anything you recognised him by except his eyes and the upper part of his face?—I certainly did by the general expression of his countenance and by his manner.

And by his manner, which I see you did not mention in the affidavit.—Excuse me, although I did not make use of that particular word “manner”, still, the more I looked at him and the more I talked to him, the more convinced I was, and it was then that I was convinced, thoroughly convinced, of his being the man.

. . . Was his voice the same?—I do not recollect his voice. Was it the same?—I cannot say.

Do you recollect Roger Tichborne's voice?—No, I do not.

Then you could not recognise him by his voice?—No.

Had Roger Tichborne a broken accent?—Yes.

Had this man?—To a certain extent, but not so much as when he left.

Not so much as Roger Tichborne, be good enough to say that.—No, not so much.

But the character of the voice you do not recollect?—I do not. May I take it there was nothing about the voice which reminded you of Mr. Tichborne?—I cannot recollect.

• • • • •

You saw the Claimant, I think, in Salisbury?—Yes.

Were you under the impression that he was the same man who was in the Carabineers with you?—Yes, I was certainly.

Could you account for his having forgotten French and other things?—No, I could not; he had forgotten some things.

And his French altogether?—I cannot account for his French, for I never heard him speak it.

What I want to know is, did it strike you as odd that he had forgotten French and other things?—I do not know anything about the French.

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Eventually, as mentioned above, the jury stopped the case, and the claimant was subsequently indicted for perjury, convicted and sentenced to fourteen years penal servitude.

IV

CROSS-EXAMINATION JUDICIALLY CRITICISED

Dr. Kenealey

As mentioned in the Prefatory Note, Dr. Kenealey's whole conduct while defending the claimant in *R. v. Castro* met with the strongest reprobation from the Bench. The following extract, from the summing-up of Lord Chief Justice Cockburn, gives the view taken by that learned Judge not only of the counsel's attitude towards the Bench, but also of his wholly unjustified attacks upon many of the witnesses who had the misfortune to be cross-examined by him.

It should be added that Lord Maugham¹ is disposed to "venture a mild criticism . . . of the passages dealing with the unhappy Kenealey". He is of opinion that "Kenealey's insults to the Bench might have been dealt with in a few dignified sentences, and otherwise treated as beneath contempt."

No doubt Lord Maugham is right, but so pungent are the observations of the Lord Chief Justice that is thought possible some readers may care to see them.

• • • • •

FROM LORD CHIEF JUSTICE COCKBURN'S SUMMING-UP IN *R. v. CASTRO*

"Our position was rendered painful from this, that we had, again and again and over again, to interfere with the defence of the learned Counsel in order to correct mis-statements and mis-representations which we would not allow to pass unnoticed.

¹ *The Tichborne Case* (Hodder & Stoughton, 1936), pp. 363, 364.

When witnesses are misrepresented and their statements are distorted, when facts are perverted and dates set at naught—and all this not for the purpose of argument in the case, but in order to lay the foundation for foul accusations and unjust imputations against parties and witnesses. When one unceasing torrent of invective, of dirty foul slime, is sent forth wherewith to blacken the characters of men whose reputations have hitherto been beyond reproach, it is impossible for Judges to remain silent. It is not enough to say that the Counsel should be allowed to go on with his address to the end and that the Judge should wait till it comes to his turn to speak to set matters straight—seeing that, especially in such a case as this, when weeks or months might elapse before the Judge could have an opportunity of expressing his opinion upon matters of that kind, and meanwhile a temporary impression—perhaps that is all that is hoped to be gained—may go forth fatal to the honour, to the character of persons thus assailed. We therefore felt it our duty to interpose and to check the torrent of unbridled and indiscriminate abuse which the learned Counsel for the defence thought proper to indulge in. And in what way were our remonstrances met? In ordinary cases, if in the heat of argument or the fervour of oratory or the zeal which a Counsel sometimes exhibits in examining or cross-examining a witness, the strict bounds of propriety are, as will occasionally be the case, overstepped (I am bound to say for the honour of the Bar of England it happens very rarely indeed), a word from the Judge is sufficient to restrain overflowing zeal within its proper and legitimate limits. But how were we met? By constant disrespect, by insult, by covert allusions to Scroggs and Jeffreys and judges of infamous repute—as though, by the way, if the spirit of Scroggs and Jeffreys still animated the Bench in the administration of justice, the learned Counsel would not have been pretty quickly laid by the heels and put to silence! But in that way we were met by suggestions that we were interfering with the liberty and the privilege of the Bar. . . .

“Interfere with the liberties of the Bar! What! In checking the licence of unscrupulous abuse, in restraining that which, instead of being fair and legitimate argument, amounts to mis-statement and slander! . . . And in this case, gentlemen, the living and the dead have been equally aspersed. There never was in the history of jurisprudence a case in which such an amount of imputation, accusation and invective was used before, and I trust that such an instance will never occur again. Though this prosecution is instituted by Her Majesty’s Government and carried on on the part of the Crown, you have been asked to believe that everyone connected with it, from the highest to the lowest—Counsel, solicitors, clerks, detectives, everybody—is in one foul conspiracy and has no hesitation in resorting to the most abominable means in order to purchase testimony and corrupt witnesses. Bribery you have been told had been unhesitatingly resorted to; witnesses against whom I should have supposed that nothing could be said except that they might be mistaken in the evidence they gave, have been charged with having been bribed and having committed perjury. Imputations are cast out to the right and to the left. One man is called a felon, against whom there is no more ground for charging felony than any one of us. The authorities of Stonyhurst are charged, upon no ground or foundation whatsoever, not only with not teaching morality to their students, but actually with designedly corrupting their minds. They are said to have adopted a system by which youths are sought to be brought up to be ‘men with the minds of women’ and a covert hint is thrown out of abominations half revealed at which one recoils and shudders, without any more ground for it than if the imputation had been brought against the Authorities of Eton or Westminster or any of our great public schools. The dead are assailed in the same way. Sir James Tichborne is called ‘a degraded slave’. Lady Doughty is charged with base hypocrisy; it is alleged that having discovered that her nephew had attempted the honour of her own daughter,

or even succeeded in the attempt, she shows him the door with bland smiles and honeyed words. Captain Birkett, who went down in the "Bella" when she foundered, is actually charged with having scuttled the ship in which he unfortunately perished. . . .

"I attempted to draw a distinction between that which is legitimate in advocacy and that which is forbidden; and I illustrated the difference between the *fas* and the *nefas* of advocacy by the analogous case of the Sword of the Warrior and the poisoned dagger of the assassin. The learned Counsel began by citing my language and then, applying it to his learned adversary, charged him with having been guilty of the use of the dagger of the assassin in the conduct of this case. A more unfounded charge, I am bound to say, in justice to the professional honour of Mr. Hawkins, has never been made. . . . Gentlemen, it has been very painful indeed for me to make these observations, but the case called for it. Liberty of the Bar! Till this time I should not have thought it capable of abuse, but we have unfortunately witnessed its abuse. Of that abuse, a fitting corrective is to be found in the censure of the Bench, which I know will meet, as it ought to meet, with the universal concurrence of the Bar of England."

V

WHISTLER *v.* RUSKIN

An Artist Cross-examined

THIS was an action for libel brought by the American artist James McNeil Whistler against John Ruskin, author and art critic, in November 1878.

Whistler, some of whose early work had been accepted and hung at the Royal Academy, had fallen into disfavour in Academical circles, and had developed a style of painting wholly out of keeping with the traditional art canons of the day. In 1877, a rich banker, Sir Coutts Lindsay, had built in Bond Street the Grosvenor Gallery, which was destined to hold annual exhibitions of painting. There, among other works, paintings by those who had broken away from the Royal Academy, and some which that body had rejected, were displayed. Prominent among the artists whose work appeared there were Whistler and Burne-Jones. Whistler, at the first Grosvenor exhibition, was represented by seven pictures. Of these, three were portraits, notably that of Carlyle, and four were called by him nocturnes—that is to say, night effects, two in “blue and silver”; one in “blue and gold”; and one in “black and gold”. These nocturnes excited extraordinary hostility, and Whistler on their account was subjected to much insult and obloquy. Before citing Ruskin’s violent denunciation of the nocturne in black and gold which gave rise to the libel action, it is interesting to note how Whistler himself described the effect upon him of a nocturnal or twilight landscape. In his book¹ *The Gentle Art of Making Enemies*, he writes: “And when the evening mist clothes the riverside with poetry, as with a veil, and the poor buildings lose themselves

¹ William Heinemann, p. 144.

in the dim sky, and the tall chimneys become *campanili*, and the warehouses are palaces in the night, and the whole city hangs in the heavens, and fairyland is before us—then the wayfarer hastens home; the working man and the cultured one, the wise man and the one of pleasure, cease to understand, as they have ceased to see, and Nature . . . sings her exquisite song to the artist alone."

In 1877 Ruskin was publishing, under the title of *Fors Clavigera*, a series of letters to the workmen of Great Britain. In the letter of July 2nd, after an almost fulsome eulogy of Burne-Jones' work, he wrote: "For Mr. Whistler's own sake, no less than for the protection of the purchaser, Sir Coutts Lindsay ought not to have admitted works into the gallery in which the ill-educated conceit of the artist so nearly approached the aspect of wilful imposture. I have seen, and heard, much of Cockney impudence before now, but never expected to hear a coxcomb ask two hundred guineas for flinging a pot of paint in the public's face."

This criticism, which reflected no less on Whistler's commercial fair-mindedness than on his artistic merits, was, not unnaturally, bitterly resented by its victim, who instituted proceedings for libel in the Exchequer Court. The case was tried by Baron Huddleston and a special jury on November 25th and 26th, and provided delicious fare for the artistic circles of the day.

Leading counsel were—for Whistler, Mr. Sergeant Parry and Mr. Petherman; for Ruskin, the Attorney-General (Sir J. Holker) and Mr. Bowen.

The principal witnesses for Whistler, in addition to the plaintiff himself, were William Rossetti, brother of the poet and painter, and Albert Moore. Ruskin was too ill to give evidence. The chief witnesses for the defendant were Burne-Jones, Tom Taylor, the art critic of *The Times*, and W. P. Frith, R.A., whose picture, "Derby Day" has adorned the walls of the National Gallery.

The cross-examination of Whistler by Sir John Holker speaks for itself, and the reader will form his own opinion as to whether witness or counsel scored the greater success.

CROSS-EXAMINATION OF J. MCNEIL WHISTLER BY THE ATTORNEY-GENERAL

The fullest available report of this cross-examination appears to be that presented by Whistler himself in his *Gentle Art of Making Enemies*.¹ In that report he has indicated here and there that "laughter" and "applause" occurred. No doubt they did. These words are therefore retained (lest any of the Whistlerian atmosphere be missed) in the slightly condensed reproduction of that report which follows:—

Mr. Whistler, cross-examined by the Attorney-General, said, I have sent pictures to the Royal Academy which have not been received. I believe that is the experience of all artists. . . . The nocturne in black and gold is a night piece, and represents the fireworks at Cremorne.

Not a view of Cremorne?—If it were called a view of Cremorne, it would certainly bring about nothing but disappointment on the part of the beholders. (*Laughter.*) It is an artistic arrangement. It was marked two hundred guineas. Is not that what we, who are not artists, would call a stiffish price?—I think it very likely that that may be so.

But artists always give good value for their money, don't they? —I am glad to hear that so well established. (*A laugh.*) I do not know Mr. Ruskin, or that he held the view that a picture should only be exhibited when it is finished, when nothing can be done to improve it, but that is a correct view; the arrangement in black and gold was a finished picture, I did not intend to do anything more to it.

Now, Mr. Whistler, can you tell me how long it took to knock off that nocturne?—I beg your pardon? (*Laughter.*)

Oh! I am afraid I am using a term that applies rather perhaps to my own work. I should have said, How long did it take you to paint that picture?—Oh, no! Permit me, I am too greatly flattered to think that you apply to work of mine

¹ Op. cit., pp. 2 *et seq.*

any term that you are in the habit of using with reference to your own. Let us say, then, how long did I take to—"knock off," I think that is it—to knock off that nocturne?

Well, as well as I remember, about a day.

Only a day?—Well, I won't be quite positive; I may have still put a few more touches to it the next day if the painting were not dry. I had better say, then, that I was two days at work on it.

Oh, two days! The labour of two days, then, is that for which you ask two hundred guineas?—No; I ask it for the knowledge of a life-time. (*Applause.*)

You have been told that your pictures exhibit some eccentricities?—Yes; often. (*Laughter.*)

You send them to the galleries to incite the admiration of the public?—That would be such a vast absurdity on my part that I don't think I could. (*Laughter.*)

You know that many critics entirely disagree with your views as to these pictures?—It would be beyond me to agree with the critics.

You don't approve of criticism, then?—I should not disapprove in any way of technical criticism by a man whose whole life is passed in the practice of the science which he criticises; but for the opinion of a man whose life is not so passed I would have as little regard as you would, if he expressed an opinion on law.

You expect to be criticised?—Yes, certainly. And I do not expect to be affected by it, until it becomes a case of this kind. It is not only when criticism is inimical that I object to it; but also when it is incompetent. I hold that none but an artist can be a competent critic.

You put your pictures upon the garden wall, Mr. Whistler, or hang them on the clothes-line, don't you—to mellow?—I do not understand.

Do you not put your paintings out into the garden?—Oh! I

understand now. I thought, at first, that you were perhaps again using a term that you are accustomed to yourself. Yes; I certainly do put the canvases into the garden that they may dry in the open air while I am painting, but I should be sorry to see them "mellowed"?

Why do you call "Mr. Irving" an arrangement in black?
(*Laughter.*)

Mr. (sic) Baron Huddleston: It is the picture, and not Mr. Irving that is the arrangement.

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What was the subject of the nocturne in blue and silver belonging to Mr. Grahame?—'A moonlight effect on the river near old Battersea Bridge.'

I believe it is before you. (*Laughter.*)

(*The picture called the nocturne in blue and silver was now produced in Court.*)

Witness: That is Mr. Grahame's picture. It represents Battersea Bridge by moonlight.

Baron Huddleston: What part of the picture is the bridge?
(*Laughter.*)

(*His Lordship earnestly rebuked those who laughed. And witness explained to his Lordship the composition of the picture.*)

Do you say that this a correct representation of Battersea Bridge?—I did not intend it to be a "correct" portrait of the bridge. It is only a moonlight scene, and the pier in the centre of the picture may not be like the piers at Battersea Bridge as you know them in broad daylight. As to what the picture represents, that depends upon who looks at it. To some persons it may represent all that is intended; to others it may represent nothing.

The prevailing colour is blue?—Perhaps.

Are those figures on the top of the bridge intended for people?
—They are just what you like.

Is that a barge beneath?—Yes. I am very much encouraged at your perceiving that. My whole scheme was only to bring about a certain harmony of colour.

What is that gold-coloured mark in the right of the picture, like a cascade?—The “cascade of gold” is a firework.

(A second nocturne in blue and silver was then produced.)

Witness: That represents another moonlight scene in the Thames looking up Battersea Reach. I completed the mass of the picture in one day.

(Later, the nocturne in black and gold was again produced.)

Witness: The picture represents a distant view of Cremorne with a falling rocket and other fireworks. It occupied two days, and is a finished picture. . . .

You have made the study of Art your study of a lifetime. Now, do you think that anybody looking at that picture might fairly come to the conclusion that it had no peculiar beauty?—I have strong evidence that Mr. Ruskin did come to that conclusion.

Do you think it fair that Mr. Ruskin should come to that conclusion?—What might be fair to Mr. Ruskin I cannot answer.

Then you mean, Mr. Whistler, that the initiated in technical matters might have no difficulty in understanding your work. But you do think now that you could make *me* see the beauty of that picture?

(The witness then paused and examining attentively the Attorney-General's face and, looking at the picture alternately, said, after apparently giving the subject much thought, while the Court waited in silence for his answer,)

No! Do you know I fear it would be as hopeless as for the musician to pour his notes into the ear of a deaf man. *(Laughter.)* I offer the picture which I have conscientiously painted, as being worth two hundred guineas. I have

known unbiased people express the opinion that it represents fireworks in a night scene. I would not complain of any person who might simply take a different view.

Whistler does not cite the cross-examination of the witnesses who gave evidence for the defendant, but the following brief extract from *The Times* report of the case is of some interest.

CROSS-EXAMINATION OF W. P. FRITH, R.A.

Called as a witness for the defendant, Frith in his evidence-in-chief said that he did not consider the pictures of Mr. Whistler which had been produced in court were serious works of art. There was beautiful colour, but it was no more than could be had on a wall-paper or a piece of silk. To him they did not represent either moonlight or water. The one in black and gold was not worth 200 guineas.

Cross-examined he said that one of Turner's pictures, "The Snowstorm", had been properly described by Mr. Ruskin¹ as a "mass of soap-suds and whitewash". Turner was an idol of Mr. Ruskin's, and should be of all painters, but that applied to his early works. His latest works were as insane as the people who admired them.

The jury found for the plaintiff, and awarded damages of one farthing. Each side had to pay its own—very heavy—costs. Mr. Whistler, in his book,² records, but does not comment on this award, save by displaying a life-size illustration of a farthing, partly obscured by a butterfly which was the symbol he used as his signature.

¹ In a letter to *The Times* Frith denied that he had attributed this criticism to Ruskin. "Some critic," he wrote, "was said to have described 'The Snowstorm' in those terms." With this criticism, he, Frith, would have agreed.

² Op. cit., p. 19.

VI

THE TRIAL OF ADELAIDE BARTLETT

A Medical Cross-examination

THIS was a case in which a woman named Adelaide Bartlett was charged with the murder of her husband, Edwin Bartlett, on January 1st, 1886.

The story of the relations between Mrs. Bartlett and her husband, and a third person, the Rev. G. Dyson, is of a very extraordinary character, and may be found in full in the *Trial of Adelaide Bartlett* (Notable British Trials;¹ and in another complete report edited by Edward Beal;² also, in a condensed form, in *The Life of Sir Edward Clarke*, by D. Walker Smith and E. Clarke).³ The only point with which we shall here be concerned, however, is the cross-examination of the chief medical expert.

The case for the Crown was that Mrs. Bartlett murdered her husband by chloroform poisoning, the theory being that she first lulled him into insensibility by an external application of chloroform, and that in this state he was forced by her to swallow the chloroform which, it was clearly proved, caused his death.

The case for the defence was that⁴ "it was extremely improbable that Mrs. Bartlett could have performed the first act that this theory demands of her; even if she could have done so, it is absolutely impossible that she could have performed the second." On the other hand, the defence suggested that Bartlett, in his wife's absence from the room, had poured into a wine-glass some of the chloroform which was admittedly left near the bed,

¹ W. Hodge & Co.

² Stevens & Haynes, 1886.

³ Thornton Butterworth, 1939.

⁴ *Life of Sir E. Clarke* (Thornton Butterworth, 1939), p. 182.

and had drunk it off. Within two or three minutes he might have passed into a state of coma which deepened into insensibility, and then into death. His wife, having returned, went to sleep in the chair by the bed, and it was on awaking that she found Edwin Bartlett was dead.

The case was tried by Mr. Justice Wills ; leading counsel were : for the Crown, the Attorney-General, Sir Charles Russell, Q.C. ; for the defendant, Mr. Edward Clarke, Q.C.

Dr. Stevenson, the Home Office expert, in his evidence-in-chief said that he analysed the contents of Bartlett's stomach on January 12th and following days. In his opinion the deceased had swallowed a large dose of chloroform, and that was the cause of death. If a person accidentally swallowed a large dose of chloroform it would produce a hot and fiery taste, he would not suppose he was taking some innocent thing. It would be possible to put a liquid down the throat of a person who was "fairly moderately under the influence of inhaled chloroform". It could easily be done if a man were lying on his back with his mouth open. It is possible to produce insensibility by inhalation during sleep.

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EPITOME OF THE CROSS-EXAMINATION OF DR. STEVENSON BY MR. EDWARD CLARKE, Q.C.

Can you refer me to any recorded case, anywhere, of murder by the administration of liquid chloroform?—No.

So far as you can judge, there has never been such a case?—I know of none.

In the case of chloroform do you sometimes find that a very small dose inhaled proves suddenly fatal?—Yes.

While a very large dose taken into the stomach does not produce death?—Yes.

Have there not been deaths from the swallowing of chloroform by accident within the last twenty years?—One I know of, and the one I have spoken of (*referring to a previous answer*), but I cannot call to mind now any others.

(The witness then referred to an American paper containing a table of all the known cases of poisoning by swallowing chloroform, and said he had added six more.)

Mr. Justice Wills: Those are poisonings, but not necessarily fatal?—No, not necessarily fatal. Twenty cases out of sixty-five were fatal.

(The witness was then taken through a number of the recorded cases. He gave the amount of chloroform taken and the length of time before death ensued. There was great variation between the different cases.)

Clarke: You have only had experience in one case of chloroform swallowing?—Only one.

How many years ago was that?—A good many . . . probably twenty-five.

Now, in the case of the administration of chloroform by inhalation, death takes place very suddenly sometimes, does it not?—Yes.

Not, if one say may so, from the chloroform having been inhaled and taken into the system, but from some action in the heart which is not quite—I will not say quite understood, but not—determined?—Yes. A patient would die in a few minutes after a few whiffs occasionally.

But where chloroform has been inhaled by the patient just a short time before death, you would expect, would you not, to find a distinct odour in the ventricles of the brain?—Not always; it has been observed.

(N.B. The witness had said, in chief, that "oftener than not you find nothing in the brain to indicate the cause of death. I mean short of analysis of the brain". He had not given evidence of any smell of chloroform in the brain of the deceased.)

. . . If you can find any post-mortem indications of chloroform having been inhaled, the odour in the cerebral ventricles would

be one of the principal ones?—Oh, certainly I should look for it.

Now, you have spoken, Dr. Stevenson, of the possibility of administering chloroform to persons while in sleep?—Yes.

Did you speak of adults?—Yes.

As a matter of your own practice?—No; I said I had not done it myself.

. . . You are speaking of recorded cases?—Yes.

Of adults?—Yes.

In the case of adults, is it the fact that the attempt to administer chloroform during sleep wakes the man?—Not invariably.

(Clarke then quoted from medical treatises affirming the extreme difficulty of anaesthetising a sleeping adult without waking him. The witness did not question the weight of these authorities.)

Do you say the symptoms produced by the swallowing of chloroform entirely correspond with those that follow an inhalation?—Pretty well, I think . . . the general symptoms are not very greatly different.

. . . The results of swallowing a dose of chloroform vary immensely in different cases?—Yes.

So far as the inhalation of chloroform is concerned, the symptoms are fairly regular, are they not?—Yes; the stage of excitement—I will read it to you from “Taylor”¹. “There are considered to be four stages in the administration of the vapour. In the first, the patient becomes excited; in the second, he talks incoherently, and sensibility is diminished; in the third, he is unconscious, but the muscles are rigid; in the fourth, the muscles are completely relaxed, and the patient is perfectly insensible. Danger commences with the third stage.”

¹ A well-known book on poisons.

Do you agree with that generally?—Yes.

Now, during the first stage, when the patient is excited, the passing of a quantity of chloroform over the lips and tongue and down the throat would cause severe pain, would it not?—Yes.

And in that first stage—the stage of excitement—that pain would be resented, and would arouse the patient to resistance?—Yes. Are you speaking now of its administration to a person awake?

. . . I have taken you to the state of the administration of chloroform to a person sleeping, and he would have awakened.—Yes. I do not agree that that state of excitement would be necessary if a person were asleep. I wish not to commit myself to too general a proposition.

We have got it from Dolbeau,¹ as far as his experience went, that three out of four persons awoke. . . . I have got an American authority, where he attempted it with six persons, and they all awoke.—Yes.

.
Now, apart from the question of sleeping or waking, supposing the first stage here of excitement to occur, the pain of administering the poison would be felt, and would be resisted. That would be the first thing to wake anybody up?—Yes, it might wake a person up, and it might not.

Probably from the first stage, if you only got a person into the first stage—that of excitement—the pain, whether about the tender places there, in his mouth or lips, would wake him if you put the liquid into the mouth?—Yes, in that stage.

Then, in the second, he talks incoherently, and sensibility is diminished, so that sensibility is gradually passing away?—Yes, he is intoxicated.

But still capable of feeling pain?—Yes, to a less extent.

¹ Another medical authority.

In the third, he is unconscious, but the muscles are rigid. Now, in the administration of chloroform by inhalation, when you come to that third stage, does not the jaw become rigid?—Very often. There is a great deal of rigidity in the limbs generally.

So that, at that stage, it would require force to open the mouth?—Probably, yes.

And when that rigidity passes away, the muscles become completely relaxed, and the patient is perfectly insensible?—Yes, ready for operation.

And in that stage there is no capacity for swallowing at all, is there?—Yes.

How? Is not the reflex state abolished?—No; the patient is on the operating table, and would continue to swallow.

When completely anaesthetised?—Yes.

That is a question of degree?—That is altogether a question of degree when the patient would cease to swallow. . . . He would swallow any liquid put at the back of the throat; the patient continues to swallow his own saliva for some time.

That is by muscular action?—Yes.

Not like pouring it down a leaden pipe?—No.

.
Now, suppose you had to deal with a sleeping man, and it was your object to get down his throat without his knowing it a liquid the administration of which to the lips or throat would cause great pain, do not you agree it would be a very difficult or delicate operation?—I think it would be an operation that would often fail, and might often succeed.

Would you not look upon it as a delicate operation?—I should look on it as a delicate operation, because I should be afraid of pouring it down the wind-pipe.

That is one of the dangers you contemplate?—Yes.

.

If the patient got into such a state of insensibility as not to reject it, it would go down his wind-pipe and burn that?—

Probably some of it might go down his wind-pipe.

It would probably do so?—Probably.

If it did so it would leave its traces?—I should expect to find traces after death, unless the patient lived for some hours.

Of course a great many post-mortem appearances are changed if the patient lives for some hours?—Yes.

. . . If the post-mortem examination had been performed, as Mrs. Bartlett wished it to be, on the very day on which death took place, there would have been still better opportunity of determining the cause of death?—Yes.

. . .
(Ultimately, after some two hours' consultation, the jury returned a verdict in these words—“We have well considered the evidence, and although we think grave suspicion is attached to the prisoner, we do not think there is sufficient evidence to show how or by whom the chloroform was administered.”)

The Clerk of the Court: Then you say that the prisoner is Not Guilty.

The Foreman: Not Guilty.

. . .
Walker-Smith and Clarke¹ relate an interesting postscript in a letter to Sir Edward Clarke from Lord Chief Justice Coleridge congratulating him on the result of the case. The postscript was in these words—“I hear a good thing attributed to Sir James Paget²—that Mrs. Bartlett was no doubt quite properly acquitted, but now it is to be hoped in the interests of science she will tell us how she did it.”

¹ Op. cit., p. 187.

² The distinguished surgeon.

VII

PIGOTT AT THE PARNELL COMMISSION

A Forger Cross-examined

THE Home Rule agitation was at its height both in England and Ireland between 1880 and 1890. On May 6th, 1882, Earl Spencer made his state entry into Dublin as Lord Lieutenant. That evening Lord Frederick Cavendish, the new Chief Secretary, and Mr. Burke, the Under-Secretary, were attacked and stabbed to death while walking together in the Phoenix Park. Two days later Mr. Parnell, who at that time was called by his followers "the uncrowned King of Ireland", made a short speech in the House of Commons condemning the outrage in unqualified terms. He described the murders as a deadly blow to his party.

In March 1887 *The Times* began to publish a series of articles on "Parnellism and Crime". On April 18th it published in facsimile the following letter purporting to bear Parnell's signature.

"Dear Sir,—I am not surprised at your friend's anger, but he and you should know that to denounce the murders was the only course open to us. To do that promptly was plainly our best policy. But you can tell him and all others concerned that, though I regret the accident of Lord F. Cavendish's death, I cannot refuse to admit that Burke got no more than his deserts. You are at liberty to show him this, and others whom you can trust also, but let not my address be known. He can write to the House of Commons.

*Yours very truly,
CHARLES S. PARNELL."*

On the evening of the day on which that letter appeared, Parnell, in the House, categorically denied its authenticity. He described what purported to be his signature as "an audacious

and unblushing fabrication", "I never," he said, "saw such a letter before I saw it in *The Times*." Not long after he asked for the appointment of a Select Committee to enquire whether the facsimile letter was a forgery. The Government eventually appointed a Select Commission composed of three judges to investigate all the charges made by *The Times*. In September 1888 the Special Commission met. *The Times* was represented by the Attorney-General, Sir Richard Webster, Q.C., and Parnell by Sir Charles Russell, Q.C. (later, Lord Russell of Killowen).

Parnell, says Mr. Barry O'Brien in his biography of the Irish Leader,¹ concentrated all his attention on the facsimile letter, and thought of little else. How that letter had reached *The Times* is an involved and intricate story, with the details of which we need not concern ourselves. It suffices to say that it was through the instrumentality of one Richard Pigott that *The Times* became possessed of the letter, and of other apparently compromising documents.

Parnell's solicitor, Mr. (later, Sir George) Lewis, began to suspect that Pigott had forged the letter. In one of the letters supplied by him to *The Times* the word hesitancy was spelt thus—"hesitency". The word was so spelt in letters which Pigott had admittedly written. It will be seen that Sir Charles Russell made deadly use of this fact in his cross-examination of the forger.

On October 25th Pigott was induced to call at Mr. Labouchere's house. There, after being directly accused of forgery by Mr. Lewis, he admitted his guilt. Next day, however, he denied his admission, and determined to brazen it out.

Before setting out part of the cross-examination, reference must be made to a letter which Pigott was obliged to admit he had written to Dr. Walsh, Archbishop of Dublin, three days before the first article appeared on "Parnellism and Crime". In the course of this letter he wrote that certain statements were to be published purporting to prove the complicity of Mr. Parnell himself and some of his supporters with murder and outrage in Ireland. He went on to say that he was able to point out how the designs might be successfully combated and finally

¹ *The Life of Charles Stuart Parnell* (Smith, Elder & Co.), p. 200.

met. In other words, he was purporting to warn the Archbishop, a prominent supporter of Parnell, of an attack which he said was about to be made "with the object of destroying the Parnellite party in Parliament," when he himself was the author of that attack through the instrumentality of the forged facsimile letter. Upon this letter to the Archbishop Sir Charles Russell founded an important part of his cross-examination.

The effect of that cross-examination upon Pigott is vividly described in a few sentences by Mr. O'Brien:¹ "I went into Court that 21st of February," he says, "with, I am afraid, a joyous feeling, for I wished to see Pigott—whose history was not unknown to me—pilloried. Yet before he had been an hour under the 'harrow' it was impossible not to pity the doomed wretch. I can well recall his appearance now, as the net was drawn closer and closer around him; the beads of perspiration standing out on his forehead and rolling down his face, the swollen veins, the short rapid breathing, the expression of misery and ruin which overshadowed his countenance as all hope died away and the iron grip of the merciless advocate tightened round his throat."

It was on February 20th, 1889, that Pigott went into the box as a witness for *The Times*. On the 21st and 22nd he was cross-examined by Sir Charles. The Court was then adjourned to February 26th. On that day Pigott failed to appear, and a warrant was issued for his arrest. In the meantime, in the presence of Mr. Labouchere and Mr. G. A. Sala, he had confessed to the forgery and had fled to Madrid. There, when the police had tracked him to his hotel, he committed suicide. So, as Mr. O'Brien puts it, ended the elaborate plot to destroy the Irish Leader.

Before setting out in some detail the most deadly parts of Russell's cross-examination, the reader may be reminded of what his evidence-in-chief amounted to, so far as the Parnell letter was concerned. Mr. Barry O'Brien, in his *Life of Lord Russell of Killowen*,² thus summarises it: "He had been employed by the Irish Loyal and Patriotic Union to hunt up documents which

¹ Op. cit., Vol. II, p. 212.

² *Life of Lord Russell of Killowen* (Smith, Elder & Co.), p. 226.

might incriminate Parnell, and he had bought the facsimile letter with other letters, in Paris from an agent of the Clan-na-Gael, who had no objection to injure Parnell for a valuable consideration.”

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FROM THE CROSS-EXAMINATION OF RICHARD PIGOTT¹
BY SIR CHARLES RUSSELL, Q.C.

Russell: Mr. Pigott, would you be good enough, with my Lords' permission, to write some words on that sheet of paper for me? Perhaps you will sit down in order to do so? . . .

(Pigott sat down.)

Will you write the word “livelihood”?

(Pigott wrote.)

Just leave a space. Will you write the word “likeness”?

(Pigott wrote.)

Will you write your own name? Will you write the word “proselytism” and finally (think I will not trouble you at present with any more) “Patrick Egan” and “P. Egan”?

There is one word I had forgotten. Lower down, please, leaving spaces, write the word “hesitancy”—with a small “h”.²

(Pigott wrote, and looked relieved.)

Will you kindly give me the sheet? . . .

The first publication of the Articles “Parnellism and Crime” was on the 7th March, 1887?—I do not know.

Well, you may assume that is the date.—I suppose so.

And you were aware of the intended publication of the correspondence (*i.e. the incriminatory letters*).—No, I was not at all aware of it.

¹ Op. cit., pp. 228 *et seq.*

² Pigott wrote the word “hesitancy”.

What?—No certainly not. . . .

Were you not aware that there were grave charges to be made against Mr. Parnell and the leading members of the Land League?—I was not aware of it until the publication actually commenced.

What?—I was not aware of it until the publication actually commenced.

Do you swear that?—I do.

Very good. There is no mistake about that.

(*Russell then produced the letter to Archbishop Walsh.*)

Is that your letter? Do not trouble to read it; tell me if it is your letter.—Yes, I think it is.

Have you any doubt of it?—No.

Russell (addressing the judges): My Lords, it is from Anderton's Hotel, and it is addressed by the witness to Archbishop Walsh. The date, my Lords, is the 4th of March—three days before the first appearance of the first of the articles, "Parnellism and Crime" (*Russell then read*): "*Private and confidential. My Lord,—The importance of the matter about which I write will doubtless excuse this intrusion on your Grace's attention. Briefly, I wish to say that I have been made aware of the details of certain proceedings that are in preparation with the object of destroying the influence of the Parnellite party in Parliament.*"

What were the certain proceedings that were in preparation?—

I do not recollect.

Turn to my Lords and repeat the answer.—I do not recollect.

You swear that—writing on the 4th March less than two years ago?—Yes.

You do not know what that referred to?—I do not really.

May I suggest to you?—Yes, you may.

Did it refer to the incriminatory letters, among other things?—

Oh! At that date. No, the letters had not been obtained, I think, at that date, had they, two years ago?

I do not want to confuse you at all, Mr. Pigott.—Would you mind giving me the date of that letter?

The 4th of March.—The 4th of March.

Is it your impression that the letter had not been obtained at that date?—Oh, yes, some of the letters had been obtained before that date.

Then, reminding you that some of the letters had been obtained before that date, did that passage that I have read to you in that letter refer to these letters, among other things?—No, I rather fancy they had reference to the forthcoming articles in *The Times*.

I thought you told us you did not know anything about the forthcoming articles?—Yes, I did. I find now I am mistaken—that I must have heard something about them.

Then try not to make the same mistake again, Mr. Pigott.

“Now” you go on (continuing to read from Pigott’s letter to the Archbishop): “*I cannot enter more fully into details than to state that the proceedings referred to consist in the publication of certain statements purporting to prove the complicity of Mr. Parnell himself, and some of his supporters with murders and outrages in Ireland, to be followed in all probability by the institution of criminal proceedings against these parties by the Government.*”

Russell (to the witness): Who told you that?—I have no idea.

But that refers among other things to the incriminatory letters?

—I do not recollect that it did.

Do you swear that it did not?—I will not swear that it did not.

Do you think it did?—No, I do not think it did.

Do you think that these letters, if genuine, would prove or would not prove Parnell’s complicity in crime?—I thought they would be very likely to prove it.

Now, reminding you of that opinion, I ask you whether you did not intend to refer—not solely, I suggest, but among other things—to the letters as being the matter which would

prove complicity, or purport to prove complicity?—Yes, I may have had that in mind.

You could have had hardly any doubt that you had?—I suppose so.

You suppose you may have had?—Yes.

There is the letter and the statement: "*Your Grace may be assured that I speak with full knowledge, and am in a position to prove, beyond all doubt and question the truth of what I say.*"

Was that true?—It could hardly be true.

Then did you write that which was false?—I suppose it was in order to give strength to what I said. I do not think it was warranted by what I knew.

You added the untrue statement to add strength to what you said?—Yes.

You believe these letters to be genuine?—I do.

And did at this time?—Yes.

Russell (reading): "*And I will further assure your Grace that I am also able to point out how these designs may be successfully combated and defeated.*" How, if these documents were genuine documents, and you believed them to be such, how were you able to assure his Grace that you were able to point out how the design might be successfully combated and finally defeated?—Well, as I say, I had not the letters actually in mind at that time. So far as I can gather, I do not recollect the letter to Archbishop Walsh at all. My memory is really a blank on the circumstance.

You told me a moment ago, after great deliberation and consideration, you had both (the incriminatory letters and the letter to Archbishop Walsh) in your mind?—I said it was probable I did; but I say the thing has completely faded out of my mind.

I must press you. Assuming the letters to be genuine, what were the means by which you were able to assure his Grace that you could point out how the design might be success-

fully combated and finally defeated?—I cannot conceive really.

Oh! try. You must really try.—I cannot.

Try.—I cannot.

Try.—It is of no use.

May I take it, then, that your answer to my Lords is that you cannot give any explanation?—I really cannot absolutely.

Russell (reading): "I assure your Grace that I have no other motive except to respectfully suggest that your Grace would communicate the substance to some one or other of the parties concerned, to whom I could furnish details, exhibit proofs and suggest how the coming blow may be effectually met." What do you say to that, Mr. Pigott?—I have nothing to say except that I do not recollect anything about it absolutely.

What was the coming blow?—I suppose the coming publication.

How was it to be effectively met?—I have not the slightest idea.

Assuming the letters to be genuine, does it not even now occur to your mind how it could be effectively met?—No.

Whatever the charges were, did you believe them to be true or not?—How can I say that when I say I do not know what the charges were? I say I do not recollect that letter to the Archbishop at all, or any of the circumstances it refers to.

First of all you knew this—that you procured and paid for a number of letters?—Yes.

Which, if genuine, you have already told me, would gravely implicate the parties from whom these were supposed to come?—Yes, gravely implicate.

You would regard that, I suppose, as a serious charge?—Yes.

Did you believe that charge to be true or false?—I believed that charge to be true.

You believed that to be true?—I do.

Now I will read this passage (from Pigott's letter to the Archbishop): "*I need hardly add that, did I consider the parties really guilty of the things charged against them, I should not dream of suggesting that your Grace should take part in an effort to shield them; I only wish to impress on your Grace that the evidence is apparently convincing, and could probably be sufficient to secure conviction if submitted to an English jury.*" What do you say to that, Mr. Pigott?—I say nothing except that I am sure I could not have had the letters in mind when I said that, because I do not think the letters conveyed a sufficiently serious charge to cause me to write in that way.

But you know that was the only part of the charge, so far as you have yet told us, that you had anything to do with in getting up?—Yes, that is what I say: I must have had something else in my mind which I cannot at present recollect—that I must have had other charges.

What charges?—I do not know. That is what I cannot tell you.

Well, let me remind you that that particular part of the charges—the incriminatory letters—were letters that you yourself knew all about?—Yes, of course.

Russell (reading from another letter of Pigott's to the Archbishop): ". . . *I can assure your Grace that I have no other motive in writing save to avert, if possible, a great danger to people with whom your Grace is known to be in strong sympathy. At the same time, should your Grace not desire to interfere in the matter, or should you consider that they would refuse me a hearing, I am well content, having acquitted myself of what I conceived to be my duty in the circumstances. I will not further trouble your Grace, save to again beg that you will not allow my name to transpire, seeing that to do so would interfere injuriously with my prospects, without any compensating advantage to anyone. I make the request all the more confidently because I have had no part in what is being done to the prejudice of the Parnellite party,*

though I was enabled to become acquainted with all the details."—
Yes.

What do you say to that?—That it appears to me clearly that I had not the letters in my mind.

Then if it appears to you clearly that you had not the letters in your mind, what had you in your mind?—It must have been something far more serious.

What was it?—I cannot tell you. I have no idea.

(*Mr. Barry O'Brien records¹ that at this point great beads of perspiration stood out on Pigott's forehead, and trickled down his face.*)

It must have been something far more serious than the letters?

—Far more serious.

Can you give my Lords any clue of the most indirect kind to what it was?—I cannot.

Or from whom you heard it?—No.

Or when you heard it?—Or when I heard it.

Or where you heard it?—Or where I heard it.

Have you ever mentioned this fearful matter—whatever it is—to anybody?—No.

Still locked up, hermetically sealed in your own bosom?—No, because it has gone away out of my bosom, whatever it was.

• • • • •

On receiving this answer, Russell sat down, and the cross-examination, having lasted an hour and twenty minutes, came to an end.

The tragic sequel has already been recounted.

The Times, of course, withdrew the facsimile letter; and the Commission found that it was a forgery.

¹ Op. cit., p. 239.

VIII

THE BACCARAT CASE

An Officer Cross-examined

THE Baccarat Case was an action for slander in which Sir William Gordon-Cumming, Bart., was plaintiff, and the defendants were Mrs. Arthur Wilson, Mr. Arthur Stanley Wilson, Mr. C. Lycett Green, and Mr. Berkeley Levett.

The action was the ultimate result of an allegation that Sir William, the plaintiff, had cheated at cards. He had been one of a house-party at Tranby Croft, the home of Mr. and Mrs. Arthur Wilson, in September 1890. An illustrious member of the house-party was the Prince of Wales of that day, and this largely accounted for the extraordinary public interest shown in the case.

The cheating alleged was that, while playing baccarat on two evenings, September 8th and 9th, Sir William had so manipulated his counters, representing stakes of £5 and £10 each, as to secure winnings to which he was not legitimately entitled. On the evening of September 10th, Lord Coventry, who was a fellow-guest, informed Sir William that this allegation had been made against him by certain of the players. Sir William at once categorically denied the charge, and this denial he repeated later to the Prince of Wales in the presence of Lord Coventry and another guest, General Owen Williams. Ultimately, and after much discussion, Sir William consented to sign, and did sign, a document in these terms: "*In consideration of the promise made by the gentlemen whose names are subscribed to preserve silence with reference to an accusation which has been made with regard to my conduct at baccarat on the nights of Monday and Tuesday, the 8th and 9th of September 1890, at Tranby Croft, I will, on my part, solemnly undertake never to play cards again as long as I live.*"

Despite the promise of silence contained in this document, which no doubt was honourably kept by the signatories, it was inevitable, having regard to the number and composition of the house-party, that the alleged facts should leak out: and leak out they did. The result was that Sir William's position both in the Army and in Society became intolerable, and he was, in effect, forced to bring an action for slander against his accusers.

In this action it is Sir Charles Russell's cross-examination with regard to the signed document, and the implication of its signature by the plaintiff, with which we shall here be concerned. The evidence of those who believed they saw Sir William fraudulently manipulating his counters, and his evidence denying that he had done anything of the sort, are of course fully set out in the record of the trial;¹ but that side of the case, interesting though it is, is of less psychological interest than is the question as to what is the true deduction to be drawn from the fact that so remarkable a document was signed by Sir William Gordon-Cumming.

The action was tried by the Lord Chief Justice (Lord Coleridge). The leading counsel were: for the plaintiff, the Solicitor-General (Sir Edward Clarke, Q.C.); for the defendants, Sir Charles Russell, Q.C., and Mr. H. H. Asquith, Q.C. The hearing began on Monday, June 1st, and ended on Tuesday, June 9th, 1891, when the jury found for the defendants, and judgment was given accordingly.

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FROM THE CROSS-EXAMINATION OF SIR WILLIAM GORDON-CUMMING BY SIR CHARLES RUSSELL, Q.C.

(Sir Charles Russell, cross-examining, is dealing with Sir William's reasons for signing the document in which he undertakes never to play cards again.)

After the signing of the document, did you say you proposed to go to the races the next day, and did General Owen Williams say to you, "Certainly you cannot; you must

¹ *The Baccarat Case* (Notable British Trials), Hodge, 1932.

leave the first thing in the morning"?—He suggested that I should leave the house as soon as possible, and I did leave first thing.

Now I put one question which I ask you anxiously to consider. Do you suggest, as has been suggested by learned counsel today, that Lord Coventry and General Owen Williams advised you to sign that paper, and asked you to leave the house believing you to be an innocent man? Did they so believe you?—I am totally unable to say.

And as you stand there now, are you unable to say?—I am perfectly unable to say. I have had no conversation with either of them since, except on one occasion, and they never expressed any opinion as to my innocence or guilt.

So you are quite unable to say whether, in advising you, they were advising you as an old friend whom they believed to be innocent?—I had a communication from them, the gist of which was, to the best of my recollection, that there was no possibility of believing other than my guilt from the fact of there being five to one against me. I received that letter two days after leaving Tranby Croft.

Then the suggestion made on your behalf that these gentlemen could not possibly believe you guilty was not yours?—I do not understand.

(Sir Edward Clarke here intervened, saying that he had made the statement in opening the case.)

Your first interview in which anything was communicated to you as to this serious charge was before dinner on the evening of Wednesday, the 11th?—On Wednesday.

It was on this occasion you expressed a desire to have an interview with the Prince?—It was.

That interview you had in the presence of himself, Lord Coventry, and General Owen Williams, after dinner. At what hour?—I should say about half-past ten or eleven.

Then you retired, and the last and final interview was when Lord

Coventry and General Owen Williams gave you the paper which you signed?—Yes.

All that would be about half-past eleven?—Yes.

Did you think that in signing that paper you were doing a dishonouring act or not?—I felt I was doing a foolish one.

Did you think it was a dishonouring act?—At the time I had no thought, but I have thought since that it was.

Since the case of Lord de Ros, a good many years ago now, have you ever heard of a gentleman and a man of honour signing a paper in which he pledges himself not to play cards as a consideration for silence on an accusation of cheating?—

No, I have not.

You read the paper?—Yes.

More than once?—No.

You discussed it?—Yes, I discussed it.

You pointed out to Lord Coventry and General Williams that it was virtually an admission of guilt?—I said it was virtually an admission, and they agreed that it would be.

There was no name appended to it at the time it was put before you?—No.

The other signatures¹ to it were not there?—No.

Sir William Gordon-Cumming, why did you, as an innocent man, sign that paper?—Because it was put to me by these two friends of mine, on whom I placed implicit reliance, that I had no chance of clearing myself; that however often I reiterated my innocence, I had no chance of proving it against five witnesses. I was told a horrible scandal would follow, in which my name, my regiment and everything would suffer, unless I signed that paper.

¹ The signatures to the document were, subsequently, those of Albert Edward, Coventry, Owen Williams, Arthur Wilson, Arthur Somerset, Edward Somerset, Lycett Green, A. Stanley Wilson, Berkeley Levett and R. D. Sassoon. The document was given for safe keeping to the Prince of Wales.

You were told that the scandal would be all over the place?—
Yes.

The horrible scandal would be that you, an officer in the Guards, had been accused by five witnesses of cheating at cards?—Probably the word scandal was used by General Williams—a scandal to which the name of the Prince of Wales and of other persons would be attached.

How?—It would not be desirable that the name of the Prince of Wales should be associated with a game of baccarat with an officer who had been accused of cheating by his hosts, or by the people of the house in which the Prince of Wales was staying.¹

I think you told me that it was an innocent game?—It was a scandal for a man in my position.

And to avoid that scandal you signed that paper?—Yes, to avoid the scandal I signed that paper, and I have never ceased to regret that I did so.

Now I ask you again, do you not know that, rightly or wrongly, these friends of yours were advising you as they thought best in your interests as a guilty man?—I was not aware on what grounds they gave their advice.

Do you think they were honestly advising you?—I think that nothing could have been worse than the advice they gave me, and nothing could have been more unwise than my following it.

I was not asking you whether the advice was good or bad. Did you not know—did you not believe that it was the advice of men who were advising you in your interest and

¹ There was, in fact, a great outcry in the Press at the expense of the Prince of Wales. Thus the *Daily News*: “The pity of it all is in the presence of the Heir to the Throne at the head of the baccarat table. . . . Woe to the Monarchy when it can no longer perform what may fairly be called its last surviving use.” The ultimate popularity of Albert Edward as Prince of Wales, and as Edward VII, is a sufficient commentary on this pronouncement.

in the belief that you were guilty?—No; I do not think they believed it at the time.

You did within twenty-four hours?—That is a different thing. I had signed the paper in twenty-four hours.

Were you not warned by General Williams that you were not to meet the Prince of Wales?—No; it was by letter—not warned, but requested.

(There followed a legal argument as to the admissibility of a letter. The cross-examination then continued.)

Before I read this letter, am I right in saying that you signed the promise on the advice of Lord Coventry and General Williams and on their advice alone?—Yes.

No one else advised you?—No.

You do not suggest that the Prince of Wales did?—I did not see the Prince after the one interview.

I now read two letters—the first from you to General Williams:

“ Thursday September 11th.—Dear Owen,—I hope you will take an opportunity of telling the Prince of Wales how entirely I was guided in my action yesterday by his advice and yours and Coventry’s.” Why did you speak of the advice of His Royal Highness?—Because I believed that the document was submitted to the Prince of Wales before being sent to me.

“ While utterly and entirely denying the truth of the allegations brought against me, I thoroughly see now, for my own sake as well as that of others, it is essential to avoid an open row and the scandal arising therefrom. It is difficult for anyone, however innocent he may know himself to be, and however unstained his character may be, to come well out of an accusation brought by numbers against one alone, and I shrink, therefore, from doing as perhaps I ought, and court a full and thorough investigation. What a cruel blow it is to me to know that any men, even if almost strangers to me, should tell me that I have deliberately

cheated them at cards, or to feel that men like His Royal Highness and Coventry, against whom never a word has been said, and who have been called upon to advise me on such a charge, possibly believe, from the fact of my signing that paper, that I am in any way unfitted to associate with you and men like you. Of course my word is passed as regards cards; but it was quite unnecessary, for I should never, under any circumstances, have touched them again. As regards the money I won on the week, I feel it impossible for me to take it. I believe it was mainly won from the Prince, but Sassoon need know nothing as to whether I received it or not. His Royal Highness will doubtless insist upon paying it, but I should wish it to be disposed of in any way in which he may think fit either to a hospital or for a charity. I intend to fulfil my engagements in Scotland and elsewhere as if this had not occurred though with a very sore heart. This I owe to myself. Again thanking you and Coventry, I am yours sincerely,

W. GORDON-CUMMING."

You wrote that letter just read and left it to be given to General Owen Williams on the morning of your departure?—I did. This is the answer: "Tranby Croft. September 11th, 1890: Dear Cumming,—I have shown the letter I received from you this morning to the Prince of Wales and Lord Coventry.—(Signed) O.W." Then followed this memorandum, signed by the Prince, by Lord Coventry and by General Williams: "We have no desire to be unnecessarily hard upon you, but you must clearly understand that in the face of the overwhelming evidence against you it is useless to attempt to deny the accusation. So long as you comply with the conditions you have signed, silence will be strictly maintained as far as we are concerned. In this we have dealt with you as old friends and in your interest, but we must plainly tell you that we consider we have acted quite as leniently as we possibly could under the painful circumstances of the case. As a matter of course, you will receive a cheque from

Mr. Sassoon for the money owing you, in which proceeding we all agree, and it will then rest with you to dispose of it as you think fit." Have you disposed of it?—The money is in my possession.

As a fact the cheque has been paid into the bank?—But the money is in my possession.

(After adjournment.)

I put to you (yesterday) Sir William Gordon-Cumming, the letter of September 11th—the day on which you left Tranby Croft—signed by the Prince of Wales, Lord Coventry and General Williams. Did you get another note from General Williams, and is this your letter acknowledging it?—It is in my handwriting.

The letter is as follows:—“ *Harriet Street, Lowndes Square—Dear Owen,—Your letter received to-day. I had hoped that you, at all events, would have seen your way to give me the benefit of any doubt in the matter, but it seems this is not to be. This secret is in the hands of far too many to remain one long, and I have little before me to make life worth having. I suppose that in the meantime I must try and live as of old.—Yours always the same,*

WILLIAM GORDON-CUMMING.”

Now the letter that you had already received, Sir William Gordon-Cumming, and which I read yesterday, stated two things—that it was useless for you to attempt to deny the accusation and that they had dealt with you as old friends and in your own interest, concluding, “ *We must plainly tell you that we have acted as leniently as we could.*” Had you any doubt after the receipt of those communications that they believed you guilty, or that they were acting, so far as they could, to shield you?—I did believe that Lord Coventry and General Williams thought me guilty.

And the Prince?—And the Prince.

And that they had acted as they did, wisely or unwisely, in your interest, and to shield you as far as they could?—And in their own.

In your interest and in their own?—Yes.

What interest had General Williams of his own to shield?—

Neither General Williams nor Lord Coventry, as I said yesterday, wished their names to be connected with any scandal, such as would have ensued in connection with this case.

But as far as General Williams was concerned, what would be the scandal except his being, or having been, the friend of a man accused of cheating at cards?—I do not say that General Williams was not actuated by friendly motives towards me. What interest had Lord Coventry to shield?—I really cannot say.

Upon the occasion of the interview with the Prince of Wales, was one word said as to your signing the memorandum?—The memorandum had not come up then. No question of that kind had been entered into.

Kindly answer “Yes” or “No”. Is your answer “No”?—

Repeat your question please.

At the interview with the Prince of Wales, at which Lord Coventry and General Williams were present, was one word suggested as to your signing any undertaking?—No.

The interest of the Prince of Wales, as I understood you to suggest yesterday, was in not liking to have his name mixed up with a scandal of that kind?—Precisely.

The scandal being that a man of position, as my learned friend has properly said, and a distinguished person, had been accused by five witnesses of cheating?—Certainly.

Now, at all events, we have got to a time when, if you had ever thought it, you could no longer entertain the respect of these men whose friendship you had enjoyed. You had reached that point?—I beg your pardon.

When you received these letters, you had reached the point of knowing that you no longer retained the respect, as an honourable man, of these men whose friendship and esteem you valued?—If I had been guilty of the offence, yes.

Of course you knew—though it was perhaps a comparatively unimportant matter—that you were regarded by these five persons as having been guilty of dishonourable conduct?— Apparently, as they accused me of being so.

Why did you not, even then, take steps to assert your innocence and to vindicate yourself by bringing yourself face to face with your accusers?—Because I considered that, having taken that very fatal and foolish step of signing the document, it would be impossible to succeed, as many people would think me guilty, whether I was or not.

Does that mean that you regarded signing the document, and believed that it would be regarded by others, as an admission of your guilt?—No.

Let me remind you, Sir William Gordon-Cumming, that you have said that the document was put before you and that you then said—in your own language—that it would be regarded as a virtual admission of your guilt, and that you were told by Lord Coventry—Excuse me, Sir Charles; I think I said that it would be considered by some as an admission of guilt.

I do not think you said “considered by some”. However, you said that it was tantamount to an admission of guilt, and that you were told by Lord Coventry and by General Williams that it was so?—They assented to my statement that it was so.

Then what has altered the position of things from 18th September, except the fact that somehow or other this very melancholy story has become public property?—After signing the paper and committing the act of gross folly, as I characterised it yesterday, and after a reflection of four-and-

twenty hours, I saw the mistake I had made. But on the assurance by letter from General Williams that by no possibility could it come out, except to the persons immediately concerned, I lived for some time in a fool's paradise, hoping and believing that that would be the case.

Then, although in the eyes of these once-valued and esteemed friends, you were a dishonoured man, you were content to remain so if secrecy were continued?—It does not follow that because these five people believed me guilty I was guilty. I knew perfectly well that I was not.

Pray attend to my question?—I have answered your question. I assure you you have not, Sir William Gordon-Cumming. Although you knew—rightly or wrongly—that in the eyes of these gentlemen, whose respect and esteem you valued, you were a dishonoured man you were content to remain so? —I was not content to remain so.

Attend, attend! You were content to remain so, so long as secrecy was maintained?—I had no alternative.

Then I ask you again the question to which I have not yet got an answer. What has since taken place which has altered the position as it was when those letters arrived in September, except the fact that this story has become public property?—The mere fact of its becoming public property was quite sufficient for me.

Was that the only reason?—Are you asking me my reasons for taking these proceedings?

I am asking the question which I have put to you. I will now repeat it for the third or fourth time, and I hope you will kindly attend. You have told me that when you received those letters in September, you then became aware of the fact that you were regarded—rightly or wrongly—by these esteemed friends as a dishonoured man, and you have said in effect that you were content not to take proceedings provided the secrecy was maintained—

Sir Edward Clarke: Those are not the words of the witness.

Sir Charles Russell: In effect.

Sir Edward Clarke: When my learned friend says "in effect" I know what he means.

Sir Charles Russell continued: My question is, what is the altered condition of things except the breach of the secrecy and the story becoming public property?—The thing had become such public property that I thought the matter would be at once taken up by my Clubs, by my regiment, and by my friends.

That is your answer, and that is the answer I expected you to have given long ago. Did you get a letter from General Williams on September 13th?—I cannot recollect how many letters I got from General Williams. I think I did get another letter.

And did you answer his letter on 15th September?—If I received a letter from General Williams I probably answered it. The letter produced is my letter.

I will take it from you not producing General Williams' letter that you have not got it?—I can recollect what was in it now that I have seen my answer to it. I have not got the letter, but I recollect it very well.

What did you do with it?—Burned it.

You are entitled to say what was in the letter, if you like?—It was a very friendly letter, expressing extreme regret at what had occurred, saying that he was glad he was there to suppress a horrible scandal, and saying that the matter would remain a secret, and that not another word would be said about it. That is as nearly as I can recollect.

And this is your answer, dated September 15th, Monday:
"My dear Owen,—Thanks for your letter of the 13th. You can well understand how deeply I feel the great kindness and friendship you have shown me in the matter. I have taken your advice about . . .—Yours ever very truly, William Gordon-Cumming.—

Will you kindly say what is the last word in that letter, Sir Charles?

“*Thanks for your letter of 13th. You can well understand how deeply I feel the great kindness and friendship you have shown me in the matter. I have taken your advice about Mar.*”—Precisely.

Was that advice that you were not to meet the Prince of Wales at Mar?—It was.

I think you told us yesterday that you have not met the Prince since?—I have not.

You know also that, in order that there should be as far as possible no suspicion raised, Lord Coventry and General Owen Williams have, if they have met you casually at the clubs, recognised you in the ordinary way?—Certainly.

But you have never met either of them in Society since?—In the clubs and on the race-course. Nowhere else, except once at General Williams’s house.

That is this very year?—Yes.

I am coming to that. At the interview with Lord Coventry and the Prince of Wales and General Owen Williams you disclaimed the intention of taking the money which you had won on September 8th and 9th?—No; I never suggested it.

Not at the interview?—I did not.

Here is the cheque for the money you received. I think it was paid into your bankers?—Precisely.

Into your general account?—Into my general account.

Then when you said you had this £228 still, you meant that you had that balance at your banker’s still?—Yes.

You paid it into the bank and then drew your cheques in the ordinary way?—Precisely.

I do not think you even acknowledged the receipt of the cheque?

—Receiving it and paying it in would constitute a receipt.

True, in law; I quite agree. The end of September passes, the whole of October, the whole of November, and up to

the month of December, you had done nothing?—In what way?

In any way towards your vindication, or your reinstatement in the good opinion of your friends?—I had done nothing of any sort or kind.

And did you, then, at the end of December—on December 27th—receive an anonymous telegram from Paris?—A letter.

Have you got it?—Yes.

It is in French, but I will read it, translating as I go. It is dated “Paris” and it says—“*They are beginning to talk much here of what passed at Newmarket this summer and of your sad adventure. If you come to Paris or to Monte Carlo, be very reserved and do not touch a card. They have talked too much about it*” and the signature is “*Someone who pities you*”?—Precisely.

I may just ask you, in passing, is the place from which this was written 4 Place de la Concorde?—Yes.

Is that a club that you belong to?—Yes, it is.

Upon receiving this anonymous letter, did you at once send it to General Owen Williams?—I did.

• • • • •

As recounted above, the jury found for the defendants.

It is only fair to the memory of Sir William Gordon-Cumming to add that in Sir Edward Clarke’s opinion the verdict was wrong. “I believe,” he wrote, “that Sir William Gordon-Cumming was innocent of the offence charged against him.”

IX

W. S. GILBERT *v.* THE ERA

A Theatrical Case

THIS was a libel action with a strong theatrical flavour.

Gilbert, whose fame is inseparably connected with that of Sullivan, had, in the course of an interview with a Scottish newspaper, declared that English poetic drama was doomed to failure, because, said he, no English actor, including Tree, Irving, Wyndham, Hare and Alexander, could make a thirty-line speech at all interesting. Irving and others not unnaturally resented these tart observations, and *The Era* published an article in which the following words appeared: “Mr. Gilbert’s self-esteem has with advancing years developed into a malady. In his own estimation he is a kind of Grand Llama or Sacred Elephant of dramatic literature. His good nature has become obscured by the abnormal protuberance of his bump of self-esteem. That this—what’s his name—Grundy should have written successful original works, while he, the Great Gilbert, has met with failure after failure in modern drama is preposterous and not to be borne.”

Gilbert had, shortly before this paragraph appeared, written a play called “The Fortune Hunter”, which several London theatres had refused, and which had met with but modified success in Birmingham and Edinburgh. As an author his preference for criticising to criticism was well marked, and it is not surprising that he instituted proceedings for libel in respect of the paragraph just quoted.

Lawson Walton, Q.C., and Marshall Hall appeared for the plaintiff, Gilbert; and Carson represented *The Era*. It may be amusing to cite some of the cross-examination in the case, “in

which", says Mr. Marjoribanks in his *Life of Carson*¹ "the Court never lost the atmosphere of comic opera."

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FROM SIR E. CARSON'S CROSS-EXAMINATION OF GILBERT

You don't like reading hostile criticism?—I have a horror of reading criticism at all, either good or bad. . . . I never read favourable criticism, I prefer reading unfavourable ones. I know how good I am, but I do *not* know how bad I am.

Do you agree that "The Fortune Hunter" was a very bad play?—A play that fails is for all practical purposes a bad play.

(Carson then reminded witness of what he had said about English actors in poetic drama, and asked:)

Did you observe from the public Press that a short time afterwards Sir Henry Irving, at a dinner of the Sheffield Press Club, spoke good-humouredly but warmly about the criticisms upon himself?—I do not admit that he spoke good humouredly but warmly. I noticed that he spoke most angrily and most spitefully concerning me. He described me as a librettist who soared to write original comedy.

What is the direction of current dramatic taste?—In the direction of musical comedy, in which half a dozen irresponsible comedians are turned loose on the stage to do as they please.

Will you mention one of them?—Oh, there are plenty of them! I wish you would mention one.—Well, take the pantomime at Drury Lane Theatre with the great Dan Leno.

But that only goes on for a short time in the year.—It goes on for a long time in the evening.

Do you really describe a pantomime as bad musical comedy?—

No, but I would describe a bad musical comedy as a pantomime.

That is very clever; but I would like to know what you mean

¹ *The Life of Lord Carson*, Vol. I (Victor Gollancz, Ltd., 1932), p. 245.

by bad musical comedies. Give me the name of one.—There are fifty of them.

Give me one.—I would say such a piece as “The Circus Girl.” Would you call it a bad musical comedy?—I would call it bad.

I believe the manager calls it musical comedy.

Have they half a dozen irresponsible low comedians turned loose in “The Circus Girl”?—I do not know how many there are.

Mr. Hesketh Pearson in his *Gilbert and Sullivan*¹ thus describes the ensuing cross-examination:

“Varying his line of attack, Carson wanted to know what complaint Gilbert had against the critics. Gilbert declared that there were fewer original plays on the stage because the critics drew no distinction between original work and translations or adaptations. As a boy he had translated the Greek dramatists, but had never considered himself the author of their works. ‘I have always given Sophocles the credit for his share of the work,’ he added amidst laughter.

“Carson now tried another tack. Gilbert had quarrelled with a number of people? Gilbert refused to admit that he had. ‘Was he not extremely touchy and quick-tempered?’—‘Certainly not’. ‘Well, had he not quarrelled with, for example, Clement Scott?’—‘Yes, he had written to Clement Scott nine years ago complaining of a criticism.’

“‘You said, “I am determined not to expose myself again to your insulting jibes?”—‘Yes, no doubt I wrote that!’

“‘You were cool and calm’?—‘Yes, calm and deliberate. I don’t know my temperature at the time.’ (Prolonged laughter.) . . .

“Gilbert had scored off Carson all along the line, but Carson’s turn came with his speech for the defendants, when he made it so hot for Gilbert that the latter, seething with retorts he was unable to utter, got up noisily and stamped out of Court.

“After an absence of two and a half hours the jury could not reach an agreement”.

¹ Messrs. Hamish Hamilton, Ltd., p. 262.

X

CADBURY v. STANDARD NEWSPAPERS

Cross-examination in a newspaper Libel Case

THIS was a libel action in which what appeared to be a devastating cross-examination by Sir Edward Carson failed to secure a verdict for his clients, the defendants, although the nominal damages of one farthing awarded to the plaintiffs testified to the effect of Carson's advocacy.

To put it very briefly, the question was this—had *The Standard* libelled the famous firm of Messrs. Cadbury by insinuating that they had acted as hypocrites by buying raw material for their trade from planters in the islands of San Thomé and Principe, where the condition of the indentured negro labourers was practically that of slavery?

It was abundantly clear that for some years Messrs. Cadbury had been deeply concerned about the terrible conditions prevailing in these islands, had spent thousands of pounds in ascertaining the facts, and had consulted Sir Edward Grey at the Foreign Office as to the desirability of discontinuing purchases from the islands. They had been advised not to discontinue until Great Britain had exercised diplomatic pressure upon Portugal, to whom the islands belonged, on the ground that Messrs. Cadbury's commercial interest in the islands would strengthen the hands of the Foreign Office in such action as they might see fit to take.

In September 1908 the *Standard* published a bitter article, in the course of which the state of affairs in the islands was thus referred to: "It is not called 'slavery'; 'contract labour' they call it now, but in most of its essentials it is that monstrous trade in human flesh and blood against which the Quaker and Radical

ancestors of Mr. Cadbury thundered in the better days of England."

In January 1909, conditions having failed to improve, Messrs. Cadbury ceased to buy cocoa from the islands. Meanwhile a writ for libel was issued against the *Standard*, and the case was tried at Birmingham before Mr. Justice Pickford. Leading counsel were: for the plaintiffs, Mr. Rufus Isaacs, K.C., and Mr. John Simon, K.C.; for the defendants, Sir E. Carson, K.C., and Mr. Eldon Banks, K.C. The severity of the cross-examination to which Mr. W. A. Cadbury was subjected can be judged from the following questions and answers as cited by Mr. Marjoribanks in his *Life of Lord Carson*.¹

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FROM THE CROSS-EXAMINATION OF W. A. CADBURY
BY SIR EDWARD CARSON, K.C.

Is it a fact that San Thomé cocoa has been slave-grown to your knowledge for eight years?—Yes.

Was it slavery of a very atrocious character?—Yes.

Men, women and children taken forcibly from their homes against their will?—Yes.

Were they marched like cattle?—I cannot answer that, quite. They were marched in forced marches down to the coast.

Were they labelled when they went on board the ship?—Yes.

How far had they to march?—Various distances. Some came from more than a thousand miles, some from quite near the coast.

Never to return again?—Never to return.

From the information which you procured did they go down in shackles?—It is the usual custom, I believe, to shackle them at night on the march.

Those who could not keep up with the march were murdered?—I have seen statements to that effect.

¹ *The Life of Lord Carson*, Vol. I (Victor Gollancz, Ltd., 1932), pp. 395 *et seq.*

You do not doubt it?—I do not doubt that it has been so in some cases.

The men, women, and children are freely bought and sold?—I do not believe, so far as I know, that there has been anything that corresponded to the open slave-market of fifty years ago. It is done now more by subtle trickery and arrangements of that kind.

You do not suggest that it is better because done by subtle trickery?—No.

The children born to the women who are taken out as slaves become the property of the owners of the slaves?—I believe that the children born on the estate do.

Was it not the most cruel and atrocious form of slavery that ever existed?—I cannot distinguish between slavery and slavery. All slavery is atrocious.

Knowing it was atrocious, you took the main portion of your supply of cocoa for the profit of your business from the islands conducted under this system?—Yes, for a period of some years.

You do not look upon that as anything unusual?—Not under the circumstances.

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(Sir E. Carson quoted from a report of the Board of Messrs. Cadbury: "There seems little doubt that public opinion would condemn the existing conditions of labour if the facts could be made known".)

Does that represent your view?—Yes.

There would be no difficulty about making the facts known?—There would be no difficulty.

If you had made public the facts, public opinion would have condemned the conditions of labour and you would not have gone on?—I think so.

•

However deadly this cross-examination may appear, it must be borne in mind that Sir Edward Grey himself gave evidence in the case, and corroborated the account given by the Cadburys as to their relations with the Foreign Office, and bore witness to their perfect good faith. As recounted above, the jury found for the plaintiffs, thereby acquitting them of bad faith, but awarded only nominal damages. Mr. Justice Pickford ruled that costs must "follow the event", i.e. the very heavy costs of the action fell upon the *Standard*. As Mr. Marjoribanks in summing up the matter, very adequately and succinctly puts it:¹ "The Plaintiffs, in the hope of ameliorating the conditions of the negro in San Thomé and Principe, had continued to keep their hold on the situation with the best intentions in the world by continuing to purchase. But all their representations, and those of a Free Trade Government, had failed, and they were forced in the end to reverse their policy and to boycott the islands. Would it not have been better if they had done it sooner?"

¹ Op. cit., p. 400.

XI

THE CRIPPEN CASE

Cross-examination of a Murderer

At the end of January 1910, Mrs. Hawley Harvey Crippen, who chose to be known as Belle Elmore, disappeared from her home, No. 39 Hilldrop Crescent. Her husband, Dr. Crippen, alleged that she had gone to America. In the course of that month Crippen had bought, ostensibly for his practice, five grains of hyoscin hydrobromide, a drug only used in minute quantities by the medical profession. Shortly after Belle Elmore's disappearance her husband had pawned jewellery of hers for no less than £195. Some, if not all, of this jewellery he had given to a young woman, Ethel Le Neve, for whom he had formed an attachment.

In March Miss Le Neve came to live with him at Hilldrop Crescent. Shortly afterwards Crippen announced that he had heard by cable of his wife's death.

Suspicion having been aroused, Crippen was interviewed by the police, and admitted that he had in fact had no news of Belle Elmore's death. Thereupon a description of Mrs. Crippen was circulated in which she was described as "missing".

Two days later Crippen and Ethel Le Neve sailed for Montreal on the *Montrose*, under the disguise of a father and son named Robinson.

No. 39 Hilldrop Crescent was thereupon subjected to a thorough search, but not until after Crippen's arrest were human remains discovered hidden under the floor of the cellar. Medical analysis then showed that death had resulted from hyoscin poisoning. Moreover, on one part of the remains there was found a scar which was said to be such as would have been caused

by an operation which it was known that Mrs. Crippen had undergone.

A warrant had been issued for Crippen's arrest, which was effected on board the liner *Montrose*, the use of wireless telegraphy having enabled Chief Inspector Dew, by taking passage in a faster liner, to overtake and subsequently board the *Montrose*.

On October 18th and subsequent days Crippen was tried for the murder of his wife. Lord Chief Justice Alverstone presided. Mr. R. D. Muir, Mr. Travers Humphreys (later, Mr. Justice Travers Humphreys) and Mr. Ingleby Oddie appeared for the prosecution. The prisoner was defended by Mr. (later, Sir Alfred) Tobin, K.C., Mr. Huntley Jenkins and Mr. H. D. Roome.

The vital question for the jury was—were the human remains quite certainly those of Crippen's wife?

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FROM THE CROSS-EXAMINATION OF H. H. CRIPPEN
BY MR. R. D. MUIR

On the early morning of the 1st February you were left alone in your house with your wife?—Yes.

She was alive?—She was.

And well?—She was.

Do you know of any person in the world who has seen her alive since?—I do not.

Do you know of any person in the world who has ever had a letter from her since?—I do not.

Do you know of any person in the world who can prove any fact showing that she ever left that house alive?—Absolutely not; I have told Mr. Dew exactly all the facts.

At what hour did you last see her on February 1st?—I think it would be about between two and three some time that we retired; that would be the last I saw her.

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Did you breakfast at home?—I did.

Who prepared your breakfast?—I prepared my own breakfast; I nearly always did.

• • • • •
We have heard that you were a kind and attentive husband?—I was.

Preparing the breakfast in the morning, did you usually take her a cup of tea?—Not often; once in a great while I took her a cup of coffee, but very seldom.

• • • • •
What time did you come home on that night when you say you did not find your wife there?—The nearest I should say is, it would be my usual time, about 7.30.

Do you not recollect on that momentous night what time it was you came home?—I would not like to say. It was somewhere near 7.30, it might have been 7.25, it might have been 7.35, but it was close to 7.30.

• • • • •
Did you tell Inspector Dew that you got home between 5 and 6?—I do not remember telling him that hour.

Listen: “I came to business the next morning, and when I went home between 5 and 6 p.m. I found she had gone.”

Is that right?—If I said that to him, that was probably right. I cannot trace it back.

That was a Tuesday?—A Tuesday, yes.

The 1st February?—Yes.

Where did you think your wife had gone?—I supposed, as she had always been talking about Bruce Miller¹ to me, that she had gone there. That was the only thing I could make out.

¹ In his evidence-in-chief Crippen alleged that his wife had been on familiar terms with a music-hall artist named Bruce Miller, who used to visit her when he, Crippen, was in America. Miller had, at the time of Mrs. Crippen's disappearance, returned to America.

That is to America?—To America.

Have you made enquiries?—No.

As to what steamers were going to America on or about that date?—No, I have not.

At no time?—At no time.

Not since your arrest?—Not at all.

What?—Not at any time.

Not to find out whether there was some steamer sailing for America in which there was a woman answering the description of your wife?—I have not.

Nobody has made those enquiries?—No.

Going to America on the 1st February, did your wife take any of her furs with her?—That I could not say. She had any quantity of furs—any quantity of dresses.

Did she take any of her boxes with her?—I believe there is one missing. There were a lot of trunks and boxes in the house; I did not know how many, because she bought several lately—well, not lately, but early last fall. I believe she bought two or three boxes.

The Lord Chief Justice: You must kindly listen to the question; it is a very important one. You are not asked whether she bought them. Are you able to say whether she took any boxes with her?—I am not able to say definitely.

Is there a cab-stand near your house?—There is one round the corner somewhere—round in York Road there is a cab-stand.

Did you go to the cab-stand to inquire whether any cabman had come to take away a box for your wife?—I did not.

At any time?—At no time.

Not since your arrest?—No.

Had you got neighbours at 39 Hilldrop Crescent on either side?—Yes, we had neighbours on either side.

Have enquiries been made of the neighbours to know whether a cab or a box was seen to leave your house on the 1st February?—I have made none.

And, so far as you know, none have been made?—Not so far as I know.

You do not suggest that your wife, on a voyage to America in February, would walk away from the house?—I am sure I do not know what she would do. She was a very impulsive woman.

But you have made no inquiries?—I have made no inquiries.

Have you inquired of the milkman whether he saw your wife alive after you had left the house on that morning of the 1st February?—I have already said that I made no inquiries.

It would be most important for your defence in this case on the charge of murder if any person could be found who saw your wife alive after the Martinettis¹ saw her alive; you realise that?—I do.

And you have made no enquiries at all?—I have not conducted my own defence.

Of tradesmen, or neighbours, or cabmen? You say you have not conducted your own defence?—I have not.

You have been consulted about it, I suppose?—Certainly.

Did you suggest inquiries of that kind?—I did not.

Have you made any suggestion to Mr. Newton² or anyone as to inquiries being made anywhere?—That is a point that did not occur to me, so I have not made any such suggestions.

Did you know that any such inquiry would be fruitless?—I know nothing of the kind.

¹ Mr. and Mrs. Martinetti dined with the Crippens at Hilldrop Crescent on the evening of 31st January.

² Mr. Newton was Crippen's solicitor.

Supposing that your wife had written for her furs and jewels, what would have happened?—I would have kept them. I paid for them, and I should not have given them up—after (her) leaving me.

Did you know that she would not write for them?—I did not.

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Where do you suppose your wife was going to get the money to pay her passage to America?—She always had plenty of money, apparently.

Did you give her any?—I did not give her any, no; I asked her if she was provided with money, if she wished any, and she said, No, she wanted nothing off me.

You asked her if she wanted any money?—Yes.

When did you ask her that?—I asked her at the time she said she was going to leave me.

How many times had she said she was going to leave you?—Numerous times.

Did you always on those occasions ask her if she wanted money to go away with?—I never paid any attention because she had never carried it to such an extent.

She said she did not want any money from you?—Yes.

Were you in want of money?—I was not.

What did you do with the money that you got from pawning your wife's jewels?—I used it for advertising a new scheme I was starting—a new preparation I was putting on the market.

The Lord Chief Justice: Do you mean the whole £200—the £80 and the £115?—Yes, probably I used most of it.

You are not asked “probably”; you were asked what you used the money for.—For paying for the advertising.

Mr. Muir: Anything else?—Well, I also bought some new dental instruments with it.

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Why were you in such a hurry to pawn your wife's earrings and marquise rings?—Because when I contracted for the advertising I would have to pay cash.

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On the 2nd February you began to raise money (for this scheme) on your wife's jewels?—Quite so.

Had you never pawned jewellery of your wife's before?—I never pawned my wife's jewellery before.

The Lord Chief Justice: Had you ever pawned jewellery before?—I had pawned jewellery before, yes.

Mr. Muir: Of your wife's?—No, of my own.

Were February the 2nd and 9th of this year the only two occasions on which you had ever pawned jewellery of your wife's?—I refuse to accept the idea that it was my wife's.

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Did you say this to Inspector Dew, "I have never pawned or sold anything belonging to her before or after she left"?—I did, but I did not consider it was her property. I considered myself justified in answering in that way.

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You told the truth (*to Inspector Dew*) according to your view about the jewellery?—Yes.

Did you account for your wife's jewellery by producing those exhibits which you showed to Inspector Dew at the house?—I showed him some she left.

That she had left behind?—Yes.

And did you tell the Inspector that she had other jewellery, and must have taken that with her?—She did have some, as I have already said; she had some rings and a watch that belonged to her before she was married.

Did you intend the Inspector to believe that you were accounting for the whole of your wife's jewellery?—Certainly.

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When you found your wife had gone you say you sat down to think how you could cover up the scandal?—Yes.

You did your best to cover up the scandal?—I did.

Mr. Muir (handing up a letter): Is that your letter written on March 20th at 39 Hilldrop Crescent?—It is.

At that time was Ethel Le Neve living with you at that address?

—I would not be sure whether she came permanently to live with me at that time or not, but she had been on and off there.

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The Lord Chief Justice: When do you say Miss Le Neve came to live at Hilldrop Crescent?—The first time she came there was 2nd February, the Wednesday night. From that time on she was with me probably two or three nights or perhaps more out of the week, but when she came permanently I would not like to say, except that I know it was shortly before Easter.

Mr. Muir: On the night of February 2nd did Ethel Le Neve sleep at Hilldrop Crescent?—She did.

(*Mr. Muir read Crippen's letter to Mr. and Mrs. Martinetti of March 20th*.—“*Dear Clara and Paul, Please forgive me for not running in during the week, but I have really been so upset by very bad news from Belle that I did not feel equal to talking with anyone. And now I have just had a cable saying she is so dangerously ill with double pleuro-pneumonia that I am considering if I had better not go at once. I don't want to worry you with my troubles, but I felt I must explain why I had not been to see you. . . .*”)

Had you, when you wrote that letter, arranged to go to Dieppe with Ethel Le Neve for Easter?—Yes, I believe I had.

And did you want to wipe your wife off the slate before you went?—It was not a question of that kind. It was that I felt something was necessary to stop all the worry I was having with the inquiries.

Did you want to announce your wife's death before you started for your holiday with Ethel Le Neve on the following Thursday?—I do not think that follows as a logical sequence. That is what you intended to do at the time you wrote that letter?—I do not know whether I had at that time fixed the time when I would say that the other cable¹ had arrived or not.

You prepared an advertisement of your wife's death for the *Era*?—Yes.

When did you do that?—I cannot tell you.

On the 24th March you sent a telegram to Mrs. Martinetti saying that you had had a cable that your wife had died the previous night?—Yes.

You sent that from Victoria Station on the eve of your departure with Ethel Le Neve?—Yes.

Then you went off and took your holiday with her?—Yes.

And you came back?—Yes.

And had you to play the rôle of the bereaved husband?—Yes.

Did you do it well?—I am sure I could not tell you that.

(A letter from Crippen to a friend on black-edged paper is put to the witness, recording his sorrow for his wife's death.)

Sheer hypocrisy?—I am not denying any of this.

Do you ask the jury to believe that, not knowing that your wife might write to those people, you told them she was dead?—Yes.

Where did you think she was?—I thought she had gone to Chicago where Bruce Miller lived.

If Cora Crippen were alive she might call at any moment on her sisters?²—I did not think she would. If she went off with some other man I did not think she would have the face to go there.

¹ An alleged cable announcing Mrs. Crippen's death.

² Two of Mrs. Crippen's sisters lived in America.

You had been a tenant of 39 Hilldrop Crescent for five and a half years?—Yes.

Had the floor of the cellar of that house been disturbed during the whole of that time?—Not to my knowledge.

You were familiar with the cellar; you knew where the place was?—I have not said that I was not.

You know, of course, that those remains were found in the cellar?—I was told when I returned to England by my solicitor.

So far as you know, they could not have been put there while you were tenants?—Not that I know of; of course . . . I would not say it was impossible, because there were times when we were away.

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(*The cross-examination then turned upon the pyjama jacket in which the human remains were found under the cellar floor. Crippen did not admit that this jacket was the missing jacket from one of three sets of pyjamas bought by himself or his wife in 1909.*)

When did you make up your mind to go away from London?

—The morning after Inspector Dew was there—the 8th or 9th.

Had you the day before been contemplating the possibility of your going away?—I would not like to say that I had made up my mind. When Inspector Dew came to me and laid out all the facts that he told me, I might have thought, well, if there is all this suspicion, and I am likely to have to stay in jail for months and months, perhaps until this woman is found, I had better be out of it.

What crime did you understand you might be kept in gaol upon suspicion of?—I do not understand the law well enough to say. From what I have read it seems to me I have heard of people being arrested on suspicion of being concerned in the disappearance of other people.

You thought you were in danger of arrest?—Yes.

And so you fled the country?—Yes.

Under a false name?—Yes.

Shaved off your moustache?—Yes.

Left off wearing your glasses in public?—Yes.

Took Le Neve with you?—Yes.

Under a false name?—Yes.

Posing as your son?—Yes.

Went to Antwerp?—Yes.

Stayed in a hotel there?—Yes.

Stayed indoors all day?—Oh, no . . . we went to the Zoological Gardens and walked all over the place.

Enjoying yourselves?—Certainly.

The Lord Chief Justice: What name did you give at the Hotel?

—If I gave a name anywhere it would be Robinson.

Mr. Muir: The second description (*in the hotel register*) is that of Miss Le Neve?—Yes.

Disguised as a boy?—Yes.

Passing as your son?—Yes.

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When you got to Quebec on board the steamer, or near Quebec, Inspector Dew came on board?—Yes.

You were much surprised to see him?—I did not expect to see Inspector Dew.

Did you recognise him at once?—Yes . . . but not until he came into the cabin.

Did the Inspector say, “Good morning, Dr. Crippen, I am Inspector Dew”?—Yes.

And did you say, “Good morning, Mr. Dew”?—Good morning, Mr. Dew.

Did the Inspector then say, “You will be arrested for the murder and mutilation of your wife, Cora Crippen, in London, on or about February 2nd last”?—I would not say that I took that in, because I was so very much surprised and confused that I did not quite have my right senses.

Did a Canadian officer, Mr. McCarthy, caution you?—He did. And you realised you were being charged?—Yes.

With what?—I realised I was being charged.

With what?—Well, I realised that I was being arrested for murder; I remember hearing that.

The murder of your wife?—Yes.

Up to that time did you believe she was alive?—I did.

Did you put any question to Inspector Dew as to whether she had been found?—I did not put any question at all.

As to how he knew she was dead?—No.

As you left the cabin did you say to the Inspector, “I am not sorry, the anxiety has been too much”?—Yes.

Anxiety for what?—Anxiety thinking I might be pursued from London.

For what?—For the same reason that I ran away.

(Questions follow as to what Crippen had said to Miss Le Neve about leaving London. Further questions as to a letter he said he had received from the ship's quartermaster, which, he alleged, stated that as the captain knew who he was, and the police were coming to arrest him at Quebec the quartermaster would get him ashore and hide him. This allegation was apparently made to account for a card written by Crippen and found after his arrest, saying inter alia, “I have made up my mind to jump overboard to-night.”)

Mr Muir: You had arranged with Miss Le Neve that she was to remain on board and carry on the pretence?—Yes.

Did you ask your solicitor to find this quartermaster?—No, I did not.

Of course you understand that if your wife is alive there is no foundation for this charge at all?—Decidedly not.

And that if she could be found you would at once be acquitted of it?—Oh, rather.

What steps have been taken by you to find your wife?—I have not taken any steps.

When did you first think of prescribing hyoscine for your patients?—The first I knew of it was in 1885.

Here in London?—Yes it was early in January this year I first prescribed it for patients.

You can give the names and addresses of the persons to whom you sent your remedies?—If I went and looked them up.

Were you prescribing hyoscine for any of those patients?—Yes.

As a medicine?—Yes.

To be administered through the mouth?—Decidedly.

For what disease?—Nervous disease—coughs of a septic character and asthmatic complaints.

The Lord Chief Justice: If there is any book in which hyoscine is prescribed for use in this way, you had better produce the book.

(*No such book was produced.*)

Mr. Muir: Will you answer this question, have you got anywhere left any homœopathic preparation into which you put this hyoscine?—They were all sent out as they were made.

You have none left?—I have none left.

Have you got here any patient to whom you sent such homœopathic preparations?—Mr. Newton has been looking the matter up; I do not know.

The jury found Crippen “Guilty”. He was sentenced to death, and hanged.

XII

THE DRUCE CASE

Cross-examination of a Perjurer

THIS was an extraordinary case in which one, George Hollamby Druce, claimed that he was the true heir of the fifth Duke of Portland, and, consequently, that he himself was in fact Duke of Portland and rightful owner of the Portland and Howard de Walden¹ estates. This claim was based on the allegation that for some years the fifth Duke had lived a double life—that of the Duke of Portland at Welbeck Abbey, and that of the proprietor of the Baker Street Bazaar, under the name of Thomas Charles Druce. It was further alleged that the Duke, having wearied of his life as T. C. Druce, had staged the death of that personality in 1864, and from that time, until his death in 1879, had lived his life at Welbeck under his own proper title. It was claimed that the purported funeral of T. C. Druce was merely a sham, and that the coffin in which he was supposed to be buried contained, not Mr. Druce's body, but an equivalent weight of lead.

For some years before the Police Court hearing with which we shall be concerned, legal proceedings had been taken with a view to establishing the truth of this story, and efforts had been made to get legal sanction for the opening of the Druce grave. Mr. Herbert Druce, the son of T. C. Druce, had successfully resisted the demand, and had given evidence that he had seen his father in his coffin, and had attended the funeral at Highgate cemetery. In order to bring the matter to a head, George

¹ On the death of the fifth Duke a considerable part of his property had passed to the Howard de Walden family.

Hollamby Druce charged Herbert Druce with having committed perjury by making this statement on oath, and the summons against him came up for hearing before the Stipendiary Magistrate, Mr. Chichele Plowden, at Marylebone Police Court on October 25th, 1907.

Though the earlier proceedings had been of a complicated character, the issues here were simple—were T. C. Druce and the Duke of Portland one and the same person? Did the Duke pose, when he chose to do so, as the owner of the Baker Street Bazaar, and was the “funeral” of T. C. Druce merely a bogus affair arranged by the Duke to enable him to discard the Druce impersonation?

The whole story, in all its ramifications, and a full account of the trial, are admirably set out in *The Druce-Portland Case* by Theodore Besterman,¹ to which book readers interested in this amazing story are referred.

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Atherley-Jones, K.C., M.P., led for the prosecution, and Herbert Druce was defended by Horace Avory, K.C., and Charles Mathews, K.C.

We shall here be concerned with the evidence of one witness only, that of Robert Caldwell of Virginia, who deposed, *inter alia*, that, having himself suffered, when in India, from a disease of the nose of which he had been cured, and of which cure he knew the secret, he came to England and called on Sir Morell Mackenzie, who introduced him to the Duke of Portland. The Duke, he said, suffered from the same affliction, and he, Caldwell, effected a cure in about sixty days, for which he was paid £5,000. He affirmed that he became on intimate terms with the Duke, and stayed with him at Welbeck. He knew that the Duke posed as T. C. Druce, and that the supposed Druce funeral was a farce. He had himself brought about 200 lb. of lead to put in the coffin to simulate the weight of a body.

The Duke, he said, as Druce, wore a false beard.

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¹ Duckworth, 1935.

FROM THE CROSS-EXAMINATION OF ROBERT CALDWELL
BY HORACE AVORY, K.C.

Are you known in America as the great American affidavit-maker?—Certainly not.

Have you seen yourself so described?—I have.

They do not think much of your affidavits there?—I have only made two in my life.

That is one in this case, and one in the affairs of a Mr. Stewart?—Yes.

You think that the one in this case is the most important?—Yes.

The most to come out of it?—I do not understand; I might be stupid—I endeavoured to get money out of the second affidavit. I could not say whether it was in June. It might be.

Did you offer to sell a story of the late Mr. Stewart to the *New York Herald* for \$10,000?—Yes.

Is the story about someone having forged the Will of the late Mr. Stewart and stealing his body?—Yes.

You have made an affidavit in that case?—Yes.

You have suggested that a late Judge was the person who had forged the Will, dug up the body and transported it to another place?—Yes.

Have you not been trying to get money out of that Judge's family?—Not one cent.

Have you threatened the members of the Judge's family about this story?—No.

Have you communicated with the family?—Yes.

Was Judge Hilton the name of the gentleman you accused of these things?—Yes.

And is Albert Hilton, the son, still alive?—I wrote him one letter about the story.

What was the object?—That I might return certain letters.

Did you return the letters?—No.

Why not?—Ah, they are being taken care of by three trustees, of whom I am one.

Mr. Avory: It all comes to this that Judge Hilton had in his possession compromising letters that passed between him and the widow of Mr. A. D. Stewart?—Yes.

And he had taken them to the store where they were to be kept, and given them to a boy, and trusted that boy to put them in the safe?—Yes. He thought, he said, that the letters were genuine when he read them, and he thought so still. The affidavit was drawn up by a lawyer named Carruth of 37 William Street, New York.

(Mr. Avory read the alleged compromising letters that purported to have passed between Judge Hilton and Mrs. Stewart, concluding with one from the Judge couched in most abject terms, in which he confessed that he had been guilty of forgery, had destroyed the Will of the late Mr. Stewart, substituted an old Will for the real Will, and had been guilty of forging a deed which Mrs. Stewart supposed was a deed of trust, and making it a deed of absolute gift to himself of all the estate.)

The answer to that letter was, “I have received your confession of crime and rascality towards me, also your expression of willingness to restore all you can of my just rights. The Will you admit you destroyed and burnt, which was dear Alexander’s last Will, of course you cannot restore. You promise to make full restitution so far as possible, even to reducing yourself to a pauper, if I extend mercy to you. I shall grant you an interview, and will see you to-morrow night and will arrange with William to open the lower servants’ door. You have made frank and full confession of your infamy or I should not dare to see you. Be punctual.”)

Mr. Avory: You thought that the genuine answer of the lady?—The letter speaks for itself.

You think so?—Yes.

So do I. Needless to say the answer is “Yours just received. I shall be at the servants’ door at eleven o’clock to-night promptly.

God bless you for this, even if my life's fate should be in the balance. Of course, you will be alone.—Ever your slave, H. H.

(After the Judge had made the confession referred to, Caldwell added, he was restored to a position of trust in the lady's estate, notwithstanding his admission. Caldwell denied with vehemence that after the New York Herald had refused to purchase his story, he took it away and cooked it, and served it up again to the same paper, nor did he add any embellishment. He also denied all knowledge of the whereabouts of an affidavit he swore in 1906 before a Mr. Reading, and said he did not send it to this country or show it to anyone connected with the present prosecution. Mr. Avory suggested that in that affidavit, besides the story of the forgery and suppression of the Will, the witness told a story of Mr. Stewart's body having been snatched from its grave and buried in the vaults or cellars of the mansion where he had lived. The witness said he might have told Mr. Reading that story, but he did not put it into the affidavit.)

Mr. Avory: That is what I call cooking, embellishing your story.—Do not mention it, I object to the word.

(Further cross-examined as to the affidavit he made before Mr. Reading, Caldwell declared that Mr. Reading was a liar and worse than a villain. He promised never to reveal a word that passed between them, and it was now evident that he had not kept his word.

Mr. Avory read the report in the New York Herald, which was headed: "Mysteries to Him as plain as the Nose on his face. Robert Caldwell, great American Affidavit Maker, Reveals another Secret—this time in the guise of a London Cablegram." It then went on to say that the affidavit related to the Druce Case, and the story rivalled the Stewart case in sensationalism, and that some persons regarded Mr. Caldwell, the great American affidavit-maker, as the most accomplished romantic humorist. Caldwell described the article as a bundle of lies, but said that he did not write an answer to the paper.)

Mr. Avory (quoting from newspaper): "Mr. Caldwell deals only with men who are dead." Have you noticed that peculiarity about your affidavits?—No, sir.

Mr. Reading does not seem to think much of you, judging from what he says in the *New York Herald*?—I think as much of him as he does of me.

(In further cross-examination, Caldwell said he had never made anything out of the Stewart story, not a cent, although he had tried for three years.)

Mr. Avory: And now you are trying your hand at the Druce story?—I have stated facts which I am prepared to prove. That is what you said about the Stewart story.—I never do anything that I have reason to feel dissatisfied with. Not even after your confession about the offer of the letters you had pledged to keep secret to the *New York Herald*?

*(Caldwell replied that he felt at liberty to do that after the death of Judge Hilton in 1899, and also to make money out of the letters. Before making his affidavit in the present case, he had only read what appeared in the *New York World*, and he decided to come forward after consulting an old friend, a gentleman of means, whose name he refused to disclose.)*

He is not a Duke, I suppose?—No, he is a reputable gentleman.

(Mr. Avory asked if he had not the same keen desire to make money in this case as in the Stewart case?)—I don't care a snuff if I never receive another penny.

Mr. Avory: Then why didn't you give your story to the *New York Herald* for nothing?—Ah, ah.

(Counsel asked witness his reason for making his affidavit in the present case, and suggested it was to further the ends of justice. "The very identical thing," replied Caldwell.)

Mr. Avory: You say in your affidavit that in 1855 you consulted Sir Morell Mackenzie,¹ Sir William Jenner¹ and others. Are you aware that Sir Morell Mackenzie was only seventeen or eighteen years of age?—I do not mean to say that I saw Sir Morell Mackenzie then.

¹ A great Victorian physician.

(The witness added that he was given a recommendation to Sir Morell Mackenzie in 1857. He, however, carried it about with him for several years before presenting it.)

Waiting for him to grow up, I suppose. Your nose was horribly disfigured?—Yes.

And you say the Duke of Portland was similarly disfigured?—Only not quite so bad as me.

But a disfigurement which everyone must see?—Yes.

(Asked how he found the poor man on whom the cure for a "bulbous nose" was to be tried, Mr. Caldwell said that Sir Morell advertised for such a man, but he could not say the advertisement read: "Wanted a man with a bulbous nose". He thought he cured that man in about three weeks.)

What did you do to his nose?—Ah, you would like to get at that. You would go into the business yourself if you could.

Mr. Plowden: Another secret.

(The witness went on to say he cured two Rajahs in India and received £5,000 from each, making with the Duke of Portland's £10,000—£20,000 in all. The second £5,000 from the Duke, he supposed was for putting the lead into the coffin.)

Mr. Plowden: The same value as the nose.

Mr. Avory: Why did you leave off this remunerative business?—

Because the whole medical faculty were after me.

Why?—For dispensing medicines without being a doctor, and threatened to summons me. I thought I might go to prison. You find me a man with a bulbous nose, and I'll cure him in a month. That is a fair offer; but I should want £5,000.

(At this point the hearing was adjourned for a week. On 15th November Mr. Avory resumed his cross-examination of Robert Caldwell.

Caldwell said that it was in 1864 that he came back from India. He went there the previous year. The gentleman who cured him was Captain Wellesley Joyce, and he belonged to the 3rd Buffs. He was told his name before he saw him. He could

not say whether Captain Joyce was with his regiment there. He was with him for a couple of months. He was with him in uniform. It was at Bombay he became acquainted with him. He was still there when he left.)

Mr. Avory: If Captain Joyce was in Dublin with his regiment in 1868 and 1864, your story must be untrue?—I know my story is true.

He could not have been in India and Dublin at the same time?—

Not very well.

You said last week that you married his niece. Do you repeat that?—I do.

What was her name?—Matilda Joyce.

What was her father's name?—William.

What was his occupation?—He had none, that I ever heard of. He was a gentleman, I might say.

Where were you married?—At Aghavea, County Fermanagh.

When?—Subsequent to the India visit.

Is that a copy of your marriage certificate? (*Mr. Avory read the certificate.*)—Yes.

The date is August 1861?—Yes.

It was untrue that you were married subsequent to 1865?—

My recollection was I was married in 1863. But, seeing this document, it must be 1861.

Were you married before or after your nose was cured? You must know whether you went to the altar with a bulbous nose?—I was partly cured before I got married, and on the day of the ceremony I was looking very well.

You say you were cured by Captain Joyce?—Dr. Hans Fleming partially cured me.

That is a new name. Where did he live?—He lived in Ireland.

I thought you said that all the doctors told you that the disease was incurable?—Dr. Hans Fleming, I repeat, did partially cure me.

What were the names of the two gentlemen you cured in

India?—One I cannot remember, the other was named Von Gaspeck, a German.

What was the other gentleman?—An Italian.

Where did they come from?—Some part of India.

How did they pay you?—In English bank-notes.

They paid you £5,000 each?—Yes.

Captain Joyce possessed this wonderful secret?—Yes.

Why did he give it you?—I paid him £5,000 in notes, which I got from my father.

How did you know what Captain Joyce was going to charge you?—I knew I could not be cured for a small sum.

Did he tell you before the cure what he was going to charge you?—Yes, he said his charge would be £5,000. I paid him in advance. He would not put his hand on my nose until I did.

After he cured you he handed over the secret to you?—Yes.

Did you give the secret to either of the gentlemen you cured?—I did not.

Did the Duke's nose appear to be a disfigurement of long standing?—Yes, of long standing.

How long?—Pretty nearly a couple of years, I believe.

Did Sir Morell, or Mr. as he then was, Mackenzie, go down with you to Welbeck on his own account?—I believe it was at the Duke's invitation. It was common rumour that the Duke had a bad nose, and he was very glad to know anyone who could cure his nose.

How were you introduced when you first went to Welbeck?—I was invited to join after Sir Morell Mackenzie had had an interview with the Duke, and I was then introduced to the Duke.

How long did the treatment take?—About an hour.

Did it take an hour to give him a dose of medicine?—I did not administer any medicine.

What? Let me read you the actual words you used at the

last hearing. Listen. (*Counsel here read some of the evidence from the last hearing.*) These were the actual words taken down by the shorthand writer.—Then I stand by them. That's right. It's the best thing to do, isn't it? Why did you take an hour to give him a dose of physic?—I didn't give him physic.

Then there was no truth in your statement that you were afraid of the Medical faculty. But why were you so long?—Well, now you have drawn it out of me. It took me an hour to remove the hair from his nose. That irritated him, and he did not behave very quietly.

We are getting at the secret.—You won't know what the ointment is made of. You will be in happy ignorance of that as long as you live.

I should say that is very likely. Did this treatment go on for sixty days?—Yes.

Was there any alteration?—No, the treatment was completed at the Baker Street Bazaar.

How did Sir Morell Mackenzie pay you the £5,000 on behalf of the Duke?—In bank-notes.

Did you refuse anything else?—I did.

Did he suggest giving you a cheque?—Yes, I refused it.

What did you do with the £5,000 in bank-notes?—I held on to it until I paid some back to my father.

Did you have a banking account?—No.

What did you do with the £10,000 paid to you in India?—I pinned it on to my shirt. It was just as safe there as in the Bank.

How long did you carry these notes about?—Some months.

What notes were they?—£500 notes and some others. I don't remember which.

Did the Duke propose to pay you by cheque?—No.

Why?—Because Sir Morell Mackenzie said that I preferred notes.

Would you have refused the Duke's cheque?—Yes, I would, and I would to-day.

You said that you travelled with the Duke.—Yes, we went by way of Worksop and through a tunnel for a couple of miles.

Suppose the tunnel was not made for years after, then your story must be untrue?—It must be.

You said that you slept at Baker Street Bazaar. Where was the bedroom?—On the second floor at the back of the house.

You said the wife and five children slept there?—That was my impression.

Why did you believe so?—Because they were there for breakfast the next morning and wished me goodnight the previous night.

Did you dine there?—Yes.

Where was the dining-room?—Upstairs on the second floor.

The same floor as the bedroom?—Yes.

Where was the kitchen?—I don't know, I did not go prying about the kitchen. The food might have been brought in.

Was it pretty hot?—It was.

How many servants were there?—Two maid-servants and half-a-dozen men in livery.

They waited on you at dinner?—Two did.

What were the others doing?—Do you think it possible for me to tell?

If there was no bedroom, kitchen, nor dining-room at Baker Street Bazaar, your story must be untrue?—I should say so.

I throw the servants in, too. Supposing there were not any, your story about them must also be untrue?—Yes.

At what station did you alight when you travelled with the Duke?—I don't remember.

Was it Euston?—I don't know.

Was it a terminus?—I think it was a wayside station.

And then you drove to Baker Street?—Yes.

The Duke alighted and walked into his office, and then became
Mr. Thomas Charles Druce?—Yes.

How many times did you so travel?—About four times.

Now as to the coffin. What wood did you order the coffin to
be made of?—Beech.

Why beech?—Because it was hard wood, and it was to bear
the weight of the lead.

What directions did you give the carpenter about the box?—

I told him to make it like a coffin, but not so much tapered
at the bottom, as I did not want him to know what it was
for.

What depth was it?—About 15 inches deep.

Was that all the carpenter did?—He varnished it and put iron
handles on like those put on a coffin.

What did you pay him £50 for?—Because he seemed to be
under the impression that it was not all right, and I paid him
the money to keep him quiet and I said, “Be mum”.

Did you see him again?—I did not.

What was he like?—He was a fairly decent man.

Describe him.—I cannot; this is forty-three years ago.

You must recollect. You saw the coffin put in the hearse?—I
assisted. I put some black cloth on and I nailed it on.

Where did you get it from?—The carpenter brought it.

You put it on?—Yes, with small tacks.

Any inscription?—No.

Nothing to show who it was that had died?—No.

You want us to believe that Thomas Charles Druce had died?—
No, it was not that.

I am afraid you are losing account of what you are brought
here for. What was the object of this funeral?—To conceal
the fact that he was Thomas Charles Druce.

That he had died?—I can't follow you or your strange methods.

What were you having a mock funeral for, with fifty coaches
and a hearse and going to Highgate?—That was to pretend

that someone was dead. I believe it was a pretence of the Duke.

Who was supposed to be dead?—Thomas Charles Druce, who was the same person as the Duke.

Why was there no inscription on the coffin if it was pretended that Thomas Charles Druce was in the coffin?—I did not pretend anything. I don't know why there was not any inscription.

Mr. Plowden: Don't you see that was the finishing touch if a body were in the coffin?—I was carrying out the Duke's instructions.

Mr. Avory: Did it not occur to you to speak to the Duke about it?—It did not occur to me.

Who went in the fifty coaches?—Old men and employees. Did they want a ride?—They did not object.

Who supplied them? The Duke?—The livery-stable keeper supplied some. I told the livery-stable keeper to send old men. They got £5 each.

Did the Duke bring some from Welbeck?—Yes.

Some of his servants?—Yes.

This is as true as the rest of your story?—Yes, strictly true.

When was the date of the funeral?—28th December, 1864.

How did you fix the date?—It was between the Christmas and the New Year.

Are you prepared to swear it was not on 31st December?—I am most decidedly.

Are you prepared to say it was the 28th?—I believe so.

Have you anything to fix the date by?—Only what I have told you.

None of the family went to the funeral?—Not that I know of.

Supposing that Thomas Charles Druce was buried on 31st December, is your story true?—That can be proved by the records, beyond all doubt. I say that there was no funeral of Thomas Charles Druce on 31st December, 1864.

Supposing that he died at Holcombe House, Hendon, on 28th December, 1864, your story must be untrue?—I cannot suppose anything of the kind. I say emphatically that no such person died on that date.

(*After an adjournment Caldwell again took his place in the witness-box, and Mr. Avory continued the cross-examination. Producing some photographs, he directed the witness's attention to one which he had sworn to as the Duke of Portland, and asked if that was as he knew him?*)—Except for the false whiskers and eyebrows.

(*Mr. Avory suggested that the witness meant the whiskers and eyebrows were put on for the purpose of the photograph.*)—I don't know why he put them on.

Mr. Avory: Do you happen to know that the Duke of Portland at Welbeck was always clean shaven?—No, sir, not entirely. Did he ever wear whiskers?—Very small ones, almost as small as my own.

Whiskers. You know the difference between whiskers and a moustache?—Yes, known in America as side-boards.

Do you say the Duke ever had whiskers at Welbeck?—Yes, small whiskers.

Nothing like that photo?—Not at all.

When did you ever see the Duke with whiskers like those in the photograph—about what year?—In 1864.

Do you mean when he came to the Baker Street Bazaar with you?—Yes.

When he came up with you?—Not all the way, part of the way.

(*The witness added that he had seen him with small side-whiskers at Welbeck.*)

Different from the photo?—Yes, large bushy whiskers, I should call them.

Do you mean in his own house—in the Abbey?—Yes, in the Abbey.

Did you ever see him at the Bazaar like that?—I think not. What was the difference?—He had large whiskers on his chin as well as the side.

A beard?—Yes, certainly.

You will say that those look like false whiskers in the photo?—Yes.

And you suggest that the Duke walked about at Welbeck in his own Abbey with false whiskers?—Yes.

When did he generally put them on—at breakfast or dinner?—I cannot say, but I have seen him with them at breakfast and dinner.

Did you say he had a large stock of whiskers and beards at Welbeck?—I cannot say that.

Do you mean to say that at Welbeck, among his own servants, he wore those false whiskers?—I do.

Did he ever give you his photo?—He did.

Where is it?—That was burnt when my store warehouse was burnt down at Staten Island. It was a photo like the one produced. The Duke did not tell me when the photo was taken.

Do you mean to say that one day he would have his breakfast with whiskers and one day without?—Yes.

According to the state of the weather, I suppose?—I don't know about that.

(Questioned about his apartments at Welbeck, Caldwell said his rooms when he was a guest there were at the back of the Abbey, upstairs. He used sometimes to dine with the Duke, but he did not want to be with the Duke—in fact he wanted to get away, but the Duke would not let him, and he remained as a companion to the Duke. The Duke would talk to him by the hour, “and”, the witness added, “he had all the talk to himself as I could not get a word in edgeways”.)

Mr. Avory: Though you are an Irishman and a naturalised American. Did you know about the underground rooms

under the house—under the Abbey?—No, not under the Abbey.

Did you ever go into the Ballroom, a fine room about 100 feet long?—Yes.

And the Picture Gallery?—Yes.

Did you notice any of the pictures?—I cannot remember them, but I understood it to be the most valuable collection, perhaps, in the world.

(*Counsel produced a picture of the Duke, reproduced in the pamphlet called The Druce-Portland Case, taken from a portrait in the Gallery at the Abbey. Caldwell said that was so.*)

Mr. Avory: Now, just listen to me. Suppose those underground rooms, Picture Gallery and Ballroom were never constructed till 1872, your whole story must be untrue?—Well, I am not to suppose anything at all; but I do accept it as a fact.

Suppose that the portrait of the late Duke when the Marquis of Titchfield was not painted until after his death, is your story untrue?—It might be another. All I know is I saw a picture exactly like that.

You said last week you saw the Duke at the Bazaar, on the morning of the mock funeral in the Office?—Yes.

Did you sleep there?—Yes, I was in my bedroom.

Was the Duke there too?—He was.

Did you have breakfast there?—No.

No appetite, I suppose? Was the Duke walking about on this morning attending to his business?—He was.

So that Mr. Druce was in his own office at the Baker Street Street Bazaar superintending the arrangements for his own funeral the same day? He was superintending the arrangements as the Duke of Portland, with the whiskers and all?—Yes.

Black ones, perhaps, for the funeral?—No, they were grey.

Did you see him at the Bazaar the same night?—Yes.

So that he was walking about his own office attending to his own business after the funeral?—That is quite silly.

I should have thought it was, and I am wondering that you are telling us this story.—(*Caldwell added that he saw the Duke in the Dining-room.*)

Taking a hearty dinner, I suppose, on the strength of it.

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After the close of the case for the prosecution Mr. Atherley-Jones informed the Court that he felt he could no longer place any reliance upon the evidence of Caldwell, and that he would rest his case upon the evidence of other witnesses.

The day after this announcement a warrant was issued for the arrest of Caldwell. He was, in consequence, arrested, but, having been released on bail, he fled to America, where he was subsequently declared to be insane and was committed to an asylum. Extradition proceedings against him were dropped, and in January 1911 he died in Ward Island Insane Asylum.

Other witnesses gave evidence at the Police Court, in some respects similar to that of Caldwell. Two of these witnesses were convicted of perjury, but, before this, the case had finally collapsed when, a Faculty having been obtained for the opening of the Druce tomb, it was found that Thomas Charles Druce had undoubtedly been buried there in December 1864, and his recognisable remains were found in the coffin.

XIII

SIEVIER *v.* WOOTTEN

Cross-examination of a Racecourse Idol

THIS was a libel action in which the jury found by their verdict that Robert Sievier was, in the words of Sir Patrick Hastings,¹ "a blackmailer, a liar and rogue."

Very briefly the events which led up to the libel action (they are set out at length and with great lucidity in Sir Patrick's book) were these. Robert Standish Sievier, commonly known as Bob Sievier, was a well-known racing man who not only owned the most famous race-horse of the day, a mare named Sceptre, but also owned and conducted a paper known as *The Winning Post*. In connection with the conduct of that paper, one, Mr. Jack Joel had prosecuted Sievier for alleged blackmail. Sievier, defended by Sir Rufus Isaacs, was acquitted. After his acquittal he was, in Sir Patrick's words,² "acknowledged as the most popular member of the sporting world".

Subsequently *The Winning Post* published a series of violent attacks upon Mr. Richard Wootten, an Australian who had become a highly successful race-horse trainer in this country.

In reply Mr. Wootten prepared and circulated a pamphlet in which, without any periphrasis, he described Siever as a thorough scoundrel, a blackmailer, a cardsharpener, and a common thief. Sievier thereupon issued a writ for libel, and the action was tried by the Lord Chief Justice, Lord Reading. Sievier conducted his own case, and leading counsel for Mr. Wootten was Sir Patrick

¹ *Cases in Court*, by Sir Patrick Hastings, K.C. (W. Heinemann, Ltd.), p. 53.

² Op. cit., p. 42.

Hastings, K.C. Giving evidence on his own behalf, Sievier said:¹

"I do not profess to be a saint. I am a gambler. I have been a gambler all my life. Like all good sportsmen I have had my ups and downs. I have owned the best horses in the world. Also the worst. I am known on every race-course, and I gladly offer my character to the investigation of anyone who dares to question it. First and last I am an English sportsman, and so I would be judged." Turning to Sir Patrick Hastings, he said, "What questions would you like to ask?"

Sir Patrick knew exactly what questions he would like to ask.

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CROSS-EXAMINATION OF R. S. SIEVIER BY
SIR PATRICK HASTINGS, K.C.

You know that Mr. Wootten has said you are a blackmailer and a thief?—Oh, yes.

I am going to suggest that you are in every way a scoundrel, and that your racing career should be ended once and for all.—For any particular reason?

Many. Let us take one. Supposing an English sportsman played a game of billiards with a friend at a time when that friend was so drunk that he could not hold a cue, would it be a gross fraud to win large sums of money in such a game?—Of course it would.

Do you know a man named Horne?—I knew him well. There were two of them; two brothers. One was known as Hunting Horne, and one as Drinking Horne. When Hunting Horne went hunting he generally fell off.

(It was "Drinking Horne" from whom Sievier had won large sums of money at billiards one night in Monte Carlo).

Did Horne pay his loss that night by cheque?—He did.

¹ The following account of this case (in a slightly condensed form) is taken, by kind permission of Sir Patrick Hastings and Messrs. Heinemann, from Sir Patrick's book *Cases in Court*.

If Horne was in fact so drunk as not to know what he was doing, it would be essential that he should pay his debt that night before he became sober?—Ridiculous.

Who signed the cheque?—Horne.

Who wrote out the body of the cheque?—I did.

Was that because Horne was so drunk that he could not write it out himself?

(This Sievier indignantly denied. He also denied that at the conclusion of the evening the floor was found to be littered with uncompleted cheques, all in Sievier's handwriting, and with attempted signatures by Horne so undecipherable as to be worthless.)

The next morning did Horne repudiate the cheque?—He did. Was that upon the ground that he had been too drunk to know what he had signed?—It may have been.

And in consequence of what had occurred that night did the British Consul at Monte Carlo direct you to leave the Principality and not come back?

(Sir Patrick's account of his cross-examination continues) :—

“ For that there could be no very satisfactory explanation. . . .

“ The sweat began to glisten on his (Sievier's) face.

“ But that was only the beginning. There were so many things to ask him. . . . When he married, his wife was a rich woman. When she separated from him some time later, she was penniless. Where had the money gone? Apparently he had used his wife's fortune for the purpose of his business as a bookmaker which he had started under the name of a cousin, Punch Sievier. The money had all gone, and Sievier owed even more. He had tried to avoid liability by alleging that he was a mere manager for his cousin, and when that failed, he had escaped by pleading the Gaming Act; the one course of conduct which racing men do not forgive. He had been more than once bankrupt.

His proud boast that he was once a member of the Melbourne Club became less impressive when it was learned that he had been expelled. . . . And even outside his racing world, his conduct had been contemptible. He had proudly boasted of his generosity to the Company of Yeomanry who were sailing to the South African War. He was asked about that. It was quite true that he had promised an insurance to anyone who did not return, and some did not return.

“ ‘ It is possible that in some cases their dependants may have asked me to redeem my promise.’

“ ‘ Did any of them ever receive a penny?’ — ‘ Not that I remember.’

“ ‘ Did you ever insure one single soldier for a penny piece?’ — ‘ No.’

“ By this time,” Sir Patrick’s account continues, “ any claim that Sievier may have had to be regarded as a good sportsman, or indeed an honourable member of society, had almost disappeared. But he was quite clever enough to know that the strongest ground upon which he could take his stand had not yet been touched. ‘ I have been acquitted at the Central Criminal Court’ ¹ he said, ‘ compared with that fact, there is nothing else that matters. You have called me a blackmailer; and that you can never prove.’

“ I said we were going to try.

“ Sievier finally admitted under cross-examination that he had made some attacks upon Jack Joel, and that he had received £5,000 from his friend Mills, but he indignantly denied that

¹ This refers to the charge of blackmail, already mentioned, brought against Sievier by Mr. Jack Joel. Mr. Joel, having learned that an article relating to his life-history was to appear in *The Winning Post*, requested that the publication should not take place. He received an assurance that it would not, provided that Sievier received £5,000. In the course of the trial Sievier had denied that he had ever demanded £5,000 or any sum. His acquittal was rapturously received by his supporters.

the money had been paid as blackmail. It had been nothing but a friendly loan between two friends . . . he challenged us to put his old friend (Mills) into the witness-box to deny it. . . (Mills having been called). With difficulty I obtained the information that he knew of the attacks by Sievier against Joel, and further that he himself had handed to Sievier a cheque for £5,000; but beyond that he would not go."

(After Mills had been cross-examined by Sievier, and had asserted that the £5,000 was nothing but a friendly loan from himself, Sir Patrick re-examined him as follows.)

"Had Sievier shown you any photographs to be incorporated with the proposed article on Joel?"—"He had."

"Who did the photographs represent?"—"Two well-known criminals."

"Where were they to be placed?"—"One on each side of a picture of Joel himself?"

"What for?"—"I do not know."

"How could publication be prevented?"—"If Mr. Joel paid £5,000."

"Did Mr. Joel hand you £5,000?"—"Yes."

"What did you do with the money?"—"I handed it to Mr. Sievier."

"And was the publication stopped?"—"It was."

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The jury found a verdict for the defendant, Wootten, and as Sir Patrick puts it—"The same crowd who had cheered Sievier so enthusiastically two days before with cries of 'Good old Bob', now carried Wootten shoulder high into the Strand.

"The glory of Robert Sievier had departed, and he left the precincts of the Court by the back door, never again to be allowed upon an English race-course. . . . A well-known racing man was congratulating me upon the result of the trial, 'You seem to have known a good deal about Bob Sievier,' he said, 'but there was one thing you did not know. Sievier is the only man in England who has ever been black-balled for the Zoo!'"

XIV

THE ARCHER-SHEE CASE

A naval cadet vindicated

Cross-examination of a Postmistress

THIS was a case in which a young naval cadet, George Archer-Shee, was believed by the authorities at the Royal Naval College, Osborne, to have stolen a five-shilling postal order, and to have cashed it at the local post-office, having endorsed it with the name of the true owner.

Very briefly the facts were that on February 7th, 1908, a cadet named Terence H. Back had received a postal order for five shillings. This postal order he had placed in his locker in the morning, and in the afternoon, about 3.45, he found it was missing. Suspicion fell upon Archer-Shee, who occupied the next bed to Back. The suspicion was due in the main to the fact that the post mistress, Miss Tucker, stated when interrogated by Commander Cotton of Osborne College that about 3 p.m. on that day a cadet had asked her to cash a postal order for five shillings, endorsed "Terence H. Back", and had subsequently bought a postal order for fifteen and sixpence. Now, it was true that Archer-Shee had, on that afternoon, bought a postal order for fifteen and sixpence, but he consistently denied that he had cashed the five-shilling order. This denial, of course, involved his repudiation of the signature, Terence H. Back, on the stolen order. Seven cadets were paraded before Miss Tucker, but she was unable to identify any one of them as having transacted the business in question. She was, however, confident that it was the same cadet who had cashed the five-shilling order as had bought the order for fifteen and sixpence.

A handwriting expert gave it as his opinion that the same hand

i.e., Archer-Shee's, had written "Terence H. Back" on the postal order as had written that name at the request of Commander Cotton when the latter was questioning Archer-Shee.

Mr. Archer-Shee was asked to withdraw his son from Osborne; and the boy was re-admitted to Stonyhurst College. Mr. Archer-Shee, who was convinced of his son's innocence, consulted Sir Edward Carson, who, after having fully cross-examined the lad, threw himself heart and soul into the boy's defence.

The legal difficulties that had to be overcome before the facts could be laid before a judge and jury were very great. They are set out with great clarity in *The Life of Lord Carson*, by E. Marjoribanks,¹ Vol. I, and need not be recounted here, although they are profoundly interesting, and will well repay the closest attention.

Eventually the Lords Justices of Appeal sent the case for trial with instructions that the facts should be tried by a judge and jury before the legal objections were argued. Thus, after two years delay, the case came before Mr. Justice Phillimore and a special jury; Sir E. Carson leading for the Suppliant, and Sir Rufus Isaacs leading for the Crown on the Petition of Right brought by Mr. Martin Archer-Shee to vindicate his son.

The boy's evidence was very definite, and was summed up in reply to Carson's final question: "Is there any truth in the charge made against you?"—"No, certainly not," he replied. He was unshaken in cross-examination. There was very strong evidence as to character, from the family, from Stonyhurst, and from Osborne. One cadet, Scholes, spoke of Archer-Shee having asked him to accompany him to the Post Office on October 7th at about a quarter past two in order to get, not to cash, a postal order.

When the Solicitor-General, Sir Rufus Isaacs, opened the case for the Crown, he reduced it to this single issue—"Was the boy who bought the fifteen-and-sixpenny order the same boy who cashed the stolen order? If you believe that, the suppliant's son is necessarily guilty. . . . What you have to determine is whether the boy or the postmistress is telling the truth."

¹ *Life of Lord Carson*, by E. Marjoribanks (Victor Gollancz, Ltd., 1932), pp. 423 *et seq.*

In her evidence-in-chief the postmistress said she was certain that the same cadet had cashed the five-shilling order as had bought the one for fifteen-and-six. The essence of Carson's cross-examination was to test this vital point. She referred to the official books which recorded the issue and cashing of postal orders on that day, and on these points the cross-examination ran thus:

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FROM THE CROSS-EXAMINATION OF MISS A. C. TUCKER
BY SIR EDWARD CARSON, K.C.

Sir E. Carson: I may take it that so far as those books are concerned they can give us no assistance at all as regards the order of issue, or the order of cashing?—Quite right; they do not give any assistance at all.

Nor any assistance as to whether the same person cashed one and got one issued?—No.

For that we must rely solely on your memory?—Yes.

Do all these cadets look very much alike?—Very much.

All about the same age? . . . Do they all wear the same uniform?—I believe so.

And they are all smart, good-looking little boys?—Nearly all of them, I think.

I suppose you would agree with me that if one boy came to the counter and got something, and you had to step into the office, or go into the back office, and you found another boy there when you came back asking for something, you would not notice whether he was a different boy?—No, I certainly should not unless he was bigger or something.

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I think you would agree with me that we are driven entirely to your memory as to whether in fact you were called away when the person, whoever it was, cashed the five-shilling postal order?—I am perfectly sure at the time I was not called away.

That is a mere matter of your memory. You have nothing else?

Mr. Justice Phillimore: You have no book?—No, there is nothing to show.

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Sir E. Carson: When did you first know anything was wrong?—

The Petty Officer, Paul, came up that night and asked me if a cadet had cashed a five-shilling postal order.

Did he suggest that a cadet did it?—I do not think there was a suggestion in it.

Mr. Justice Phillimore: Did he use the word “cadet”? Instead of saying “Did a man come in?” Did he say, “Did a cadet come in?” . . . Did he use the phrase “cadet”?—I believe so.

Sir E. Carson: Did Petty Officer Paul say that a boy had signed an order which had been cashed, and that he was not the boy to whom it was payable?—No, I do not think so; I do not remember it. He may have done so, but I do not remember it at all.

Will you deny that he said that?—I do not remember it; I will not deny it.

Did he say he had only given leave to two cadets?—I am not sure.

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Did Paul say to you that a boy had signed an order which had been cashed, and that it was not the boy to whom it was payable?—I do not remember what he did say.

Did he say that such people were not wanted in the Navy?—Yes.

Mr. Justice Phillimore: Did you ever tell Paul or anybody that it was the cadet who cashed the order until you saw Commander Cotton (*i.e.* on the following morning)?—I believe so. I believe I did, but I am not quite sure.

Sir E. Carson: Whoever brought that five-shilling postal order there, did he sign it at the post office?—No, it was handed to me signed.

And you therefore know nothing about who signed it?—No, I do not.

Nor did you ask any questions?—No.

Now can you tell me anybody else who went in and had a transaction that day?—No, I do not remember.

Come, cannot you recollect anyone else having a conversation?—No, I certainly cannot.

How many went in that day?—A good many people would have come in, but there may not have been anything—

There may, or may not, but was there? Can you recollect?—No.

Can you recollect the appearance of anyone else?—No.

Can you recollect whether any cadet servants were in there?—No, I cannot.

Then you cannot call to mind any other person from that day except the cadets?—No, I could not.

Nor what they did?—No.

Nor what they said?—No.

Nor any other day?—I did not see any cadet. I only saw two cadets, as far as I know.

There is no doubt that cadet servants did go in that day?—They may or may not; I do not know.

When the inquiry was going on at the College were you not asked any single word about anybody else going in there?—I do not remember that I was. . . .

You paid no attention to any other transaction upon that day?—No, because there is nothing to mark it specially.

That is the very point I put to you, that nobody from the College requested you to recall anything else as regards that day?—No, I think not. I do not remember.

Or anything with reference to the servants, or with reference to the other orders?—No.

And nobody attempted to test your memory as to whether you could recollect at that date—that is, the day after the incident—anything that occurred with reference to other people who got orders?—No.

Other witnesses were called, among them Cadet Back, who said that Archer-Shee had not, to his knowledge, seen his postal order at all, and a Chief Petty Officer who admitted that there had been a number of other thefts both before and after Archer-Shee's departure, and that the culprits had not been found; and Captain Christian who said, "I formed my opinion entirely apart from the question of handwriting."

Next morning the case took a dramatic turn. Sir Rufus Isaacs rose and made the following statement: "As to the issues of fact, the Court and the jury will not be further troubled. . . . I say now, on behalf of the Admiralty, as a result of the investigation which has taken place, that I accept the declaration of George Archer-Shee that he did not write the name on the postal order; that he did not take it, and that he did not cash it; and that consequently he was innocent of the charge which has been brought against him. I make that statement without any reservation of any description, intending it to be a complete acceptance of the boy's statements. . . . On the other hand, my learned friend, Sir Edward Carson, accepts the statements of the Admiralty as to their action, and agrees that those responsible for all that has happened were acting under a reasonable and *bona fide* belief in the truth of the statements which had been made to them. . . . In justice to the postmistress upon whose evidence so much reliance has been placed, it is right to say that it has never been suggested that there was any want of *bona fides* on her part, and, indeed, the cross-examination of Sir Edward Carson was only directed to show that she was mistaken."

Thus the case ended in the vindication of the cadet. The jurymen, says Marjoribanks,¹ clambered out of the jury-box to

¹ Op. cit., p. 441.

congratulate Mr. Martin Archer-Shee and Sir Edward Carson. Members of the Bar and the public did the same thing.

After a notable debate in the House of Commons in which Mr. George Cave (later Lord Chancellor), Mr. F. E. Smith, Lord Charles Beresford, Mr. Alfred Lyttleton, Sir Rufus Isaacs and Mr. McKenna took part, the sum of £7,120 was paid to Mr. Martin Archer-Shee in respect of costs incurred, and by way of compensation.

It is melancholy to record that some four years later George Archer-Shee was, at the age of nineteen, one of the first British officers to be killed in the Great War of 1914-1918.

XV

THE VAQUIER CASE

A Poisoner Cross-examined

THIS was a case in which a Frenchman named Jean Pierre Vaquier was charged with the murder of a man named Jones, the licensee of the Blue Anchor, a small hotel at Byfleet, the allegation being that the murder was committed by the administration of strychnine.

Vaquier had become acquainted with Mrs. Jones, and had formed a *liaison* with her at a hotel at Biarritz early in 1924.

In February of that year he took up his abode at the Blue Anchor, apparently without objection on the part of Mr. Jones. On March 1st he went to London, and from a chemist there he bought, *inter alia*, 100 grammes of chloroform, some perchloride of mercury, and 0.12 of a gramme of strychnine, for the alleged purpose of carrying out wireless experiments. In the poison book which he was called upon to sign he gave his name as "Mr. Wanker" of Room 60, Hotel Russell—a room which he had in fact never occupied.

On March 29th, the morning after a party at the Blue Anchor, Vaquier got up early, and sat for some two hours in the bar parlour, where Mr. Jones kept a bottle of bromo salts. Eventually Mr. Jones came down to the parlour, where he poured out for himself a drink, and some of the bromo salts. "My God," he said, "they are bitter." Mrs. Jones tasted the salts, agreed with her husband's comment, and gave him an emetic. Nevertheless he became desperately ill, and shortly afterwards died.

The bottle that had contained the salts was found empty by the doctor who had been called in; it appeared to have been recently washed.

The post-mortem proved that death had been caused by strychnine poisoning, and police inquiries were set on foot. A

number of strange and inconsistent statements were made by Vaquier, one of which appeared to implicate George, the potman.

Meanwhile the chemist who had sold the poisons had identified Vaquier as the purchaser, who had called himself Mr. Wanker. Vaquier was arrested, and on his arrest said, "I will make known to-morrow who administered the poison." No such disclosure was ever made.

The trial took place before Mr. Justice Avory on July 2nd. There appeared for the Crown the Attorney-General (Sir Patrick Hastings, K.C.), Sir E. Marshall Hall, K.C., and Mr. Roome; for the prisoner, Sir Henry Curtis Bennett, K.C., and Mr. A. B. Lucy.

The prisoner gave evidence on his own behalf. He denied any complicity in the murder, repudiated an alleged confession to Mrs. Jones, and, when asked why he bought the strychnine, replied, "I was asked to do so by the solicitor of Madame Jones." This solicitor, he said, had asked for strychnine to poison a dog; he could not give the solicitor's name, nor did he offer any explanation of his statement, referred to above, that he would "to-morrow" disclose the murderer's name.

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FROM THE CROSS-EXAMINATION OF VAQUIER BY THE
ATTORNEY-GENERAL, SIR PATRICK HASTINGS, K.C.

How old are you?—Forty-five years.

Do you know what strychnine is?—I knew it was a deadly poison.

Has anybody ever asked you before to buy dangerous poisons for them?—Nobody.

Was it only the second time that you had seen the solicitor of Mrs. Jones that he asked you to buy strychnine?—Yes.

So the person who asked you to buy the strychnine was somebody to whom you had never spoken before?—I had never spoken to him before.

Did you know of any reason why he could not buy the poison for himself?—He told me he was very busy and had not time to buy it.

He gave you a sovereign for the purchase?—A pound note. Did that strike you as a large sum of money to buy enough strychnine for one dog?—Perhaps he had no change. Did you ever give him the change you must have got from buying the strychnine?—No, he never asked me.

(The prisoner is shown the poison-book signed by him.)

Is that your usual signature?—No.

What is the name you have written there?—Wanker.

You knew, then, that you were putting a false name to the poison-book? Why did you not put your real name?—Because I had been told that when you buy poison you never sign your own name.

Who told you that?—The solicitor.

Did the gentleman who asked you to buy the poison tell you to sign a false name?—Yes.

Did it strike you as odd that a complete stranger who wanted to poison a dog was telling you to sign a false name?—No.

What did you want 100 grammes of chloroform for?—For my personal use.

Had you seen Mr. Jones drunk in his hotel at times?—I carried him three times to bed.

Did it ever enter into your mind that if anybody wanted to kill Mr. Jones that would be the most easy time to do it?—No.

At the time when you carried Mr. Jones up to bed would it have been easy to give him chloroform?—It was easy to give him anything you like. He was so insensible that he could easily have been suffocated with chloroform—very easy; a child could have killed him.

What did you do with the chloroform?—I inhaled it, to sleep.

Do you desire to put suspicion on somebody else in this case?—

After what I wrote to the police that is to be understood.

What do you mean by this: “I will make known to-morrow

who administered the poison?" Who is the person you intended at that time to name to the police next day?—I wish to indicate the solicitor of Mrs. Jones¹ who had asked me to buy the poison.

Is there anybody else whom you intended to name except the solicitor of Mrs. Jones?—I said that the solicitor of Mrs. Jones could not have put the poison in the bottle, since he had not been there for eight days.²

What did you mean by your statement in which you say this: "I think the second act of the drama will be the disappearance of the wife of George"?—Because George has not perhaps a clear conscience with regard to Mrs. Jones, because he might know something.

Did you not mean by that suggestion that the next person to be murdered would be George's wife?—Yes, since she wished to go away to France.

And did you mean by this statement to suggest that the murderer would be George?—I cannot indicate anyone.

You knew that Mr. Jones had been murdered?—I knew that he had died from poison.

You knew that the solicitor of Mrs. Jones had made you buy poison?—Yes.

Have you ever until to-day told the police that this solicitor ordered or asked you to buy poison?—No.

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Vaquier was found "Guilty" by the jury, and was sentenced to death.

He violently protested his innocence, and the case was taken to the Court of Criminal Appeal. That court dismissed the appeal, and Vaquier suffered the penalty of his crime.

¹ This gentleman was subsequently called into the witness-box, and indignantly denied that there was any truth whatever in Vaquier's allegation with regard to him.

² The meaning of this reply is rather obscure. Does it imply that the solicitor had employed an agent, presumably 'George'?

XVI

DARROW *v.* BRYAN

Cross-examination of a Fundamentalist in the U.S.A.

IN March 1925 the Governor of the State of Tennessee signed a Bill which had been duly passed both by the House of Representatives and by the Senate of that State prohibiting the teaching of evolution in the Tennessee schools. A teacher in one of those schools, John T. Scopes, after the passage of the Bill into law, had pointed out to his Principal that for some years a standard textbook in all Tennessee high schools had been *Hunter's Civic Biology*, which taught, *inter alia*, that man was descended from a lower order of animals. The Principal bade him carry on as before. Meanwhile the American Civil Liberties Union of New York had declared itself ready to back any school-teacher who would test the law. Scopes declared himself ready to stand as a test case. He was consequently arrested and indicted for violating the Anti-Evolution Law.

By this time two prominent American citizens had concerned themselves with the case and all that it implied. On the anti-evolution side William Jennings Bryan had, in effect, become the prosecutor. Three times Bryan had failed to secure election as President of the United States, but when Woodrow Wilson was elected in 1912 he had appointed Bryan as Secretary of State. After little more than two years, Bryan resigned: he could not, he said, approve President Wilson's policy, which, he believed, was driving the United States into war. He continued, however, to exercise widespread influence as leader of the Fundamentalists; hence, his appearance in the Scopes trial added to the extraordinary interest aroused by that case in the United States—and not in the United States alone.

On the other side Clarence Darrow appeared. "For the first, the last, the only time in my life," said he, "I volunteered my services in a case. I did this because I really wanted to take part in it."¹ Darrow, now an old man—he was born in 1857—was the most prominent advocate in America. He had shown not only forensic skill but dauntless courage when appearing for the defence in case after case throughout his long years of practice. As a lover of liberty, the Scopes case made an appeal to him which he could not refuse. Moreover, as an agnostic, a public clash with Bryan was as attractive an encounter as he could have conceived. "I do not,"² he said, "consider it an insult, but rather a compliment, to be called an agnostic. I do not pretend to know where many ignorant men are sure."

It was in the town of Dayton, Tennessee, that the Scopes Evolution trial took place, Judge Raulston presiding. The trial took a peculiar course, with the technicalities of which we need not concern ourselves. Judge Raulston ruled that experts and their testimony were to be excluded. He laid it down that neither religion nor evolution was on trial—that Scopes was on trial for violating a specific Tennessee law. Darrow, therefore, being unable to call scientific witnesses, decided to make all possible capital out of William Jennings Bryan. He asked him if he would be willing to give evidence as an expert on the Bible. Bryan readily assented, and Darrow seized the opportunity (despite the fact that Bryan was nominally his own witness) of subjecting him to a very remarkable cross-examination, characteristic parts of which ran thus:

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FROM THE CROSS-EXAMINATION OF W. J. BRYAN BY
C. DARROW

You have given considerable study to the Bible, haven't you, Mr. Bryan?—Yes, I have. I have studied the Bible for about fifty years.

¹ *Darrow for the Defence* (The Bodley Head), p. 420. ² Op. cit., p. 432.

Do you claim that everything in the Bible should be literally interpreted?—I believe everything in the Bible should be accepted as it is given there. Some of the Bible is given illustratively. For instance: “Ye are the salt of the earth.” I would not insist that man was actually salt, or that he had flesh of salt, but it is used in the sense of salt as saying God’s people.

When you read that the whale swallowed Jonah, how do you literally interpret that?—When I read that a big fish swallowed Jonah, I believe it, and I believe in a God who can make a whale, and can make a man, and make them both do what he pleases. One miracle is just as easy to believe as another.

You mean just as hard?—It is hard to believe for you, but easy for me.

Do you believe Joshua made the sun stand still?—I believe what the Bible says.

I suppose you mean that the earth stood still?—I don’t know.

I am talking about the Bible now. I accept the Bible absolutely.

Do you believe at that time the entire sun went around the earth?—No, I believe the earth goes round the sun.

Do you believe that the men who wrote it thought that the day could be lengthened, or that the sun could be stopped?—I believe what they wrote was inspired by the Almighty, and He may have used language that could be understood at that time—instead of language that could not be understood until Darrow was born.

Now, Mr. Bryan, have you ever pondered what would have happened to the earth if it stood still suddenly?—No.

Don’t you know it would have been converted into a molten mass of matter?—You testify to that when you get on the stand; I will give you a chance.

You believe the story of the flood to be a literal interpretation?—Yes, Sir.

When was that flood?—I would not attempt to fix the day.

But what do you think the Bible itself says? Don't you know how it was arrived at?—I never made a calculation.

What do you think?—I do not think about things I don't think about.

Do you think about things you do think about?—Well, sometimes.

(An objection was here raised to Darrow cross-examining his own witness, whereupon Bryan said, "These gentlemen . . . came here to try revealed religion. I am here to defend it, and they can ask me any question they please." Darrow continued:)

How long ago was the flood, Mr. Bryan?—Two thousand three hundred and forty-eight years B.C.

You believe that all the living things that were not contained in the Ark were destroyed?—I think the fish may have lived.

Don't you know there are any number of civilisations that are traced back to more than five thousand years?—I am not satisfied by any evidence I have seen.

You believe that every civilisation on the earth, and every living thing, except possibly the fishes, were wiped out by the flood?—At that time.

You have never had any interest in the age of the various races and peoples and civilisations and animals that exist upon the earth to-day?—I have never felt a great deal of interest in the effort that has been made to dispute the Bible by the speculations of men, or the investigations of men.

And you have never investigated to find out how long man has been on the earth?—I have never found it necessary.

Don't you know that the ancient civilisations of China are six thousand or seven thousand years old, at the very least?—No, but they would not run back beyond the Creation, according to the Bible, six thousand years.

You don't know how old they are; is that right?—I don't know how old they are, but probably you do. I think you would give the preference to anybody who opposed the Bible.

Well, you are welcome to your opinion. Have you any idea how old the Egyptian civilisation is?—No.

Mr. Bryan, you don't know whether any other religion ever gave a similar account of the destruction of the earth by the Flood?—The Christian religion has satisfied me, and I have never felt it necessary to look up some competing religions. Do you know how old the Confucian religion is?—I can't give you the exact date of it.

Do you know how old the religion of Zoroaster is?—No, sir. What about the religion of Confucius or Buddha? Do you regard them as competitive?—No, I think they are very inferior. Would you like for me to tell you what I know about it?

No. Do you know anything about how many people there were in Egypt thirty-five hundred years ago, or how many people there were in China five thousand years ago?—No.

Have you ever tried to find out?—No, sir; you are the first man I ever heard of that has been interested in it.

Mr. Bryan, am I the first man you ever heard of who has been interested in the age of human societies and primitive man?—You are the first man I ever heard speak of the number of people at those different periods.

Where have you lived all your life?—Not near you.

Did you ever read a book on primitive man? Like Tyler's *Primitive Culture*, or Boas, or any of the great authorities?—I don't think I have read the ones you have mentioned.

Have you read any?—Well, I have read a little from time to time. But I didn't pursue it because I did not know I was to be called as a witness.

You have never in all your life made any attempt to find out

about the other peoples of the earth—how old their civilisations are, how long they have existed on the earth—have you?—No, sir, I have been so well satisfied with the Christian religion that I have spent no time trying to find arguments against it. I have all the information I want to live by and to die by.

Do you think the earth was made in six days?—Not six days of twenty-four hours.

Doesn't the Bible say so?—No, sir.

Mr. Bryan, do you believe that the first woman was Eve?—Yes.

Do you believe she was literally made out of Adam's rib?—I do. Did you ever discover where Cain got his wife?—No, sir; I leave the agnostics to hunt for her.

Do you think the sun was made on the fourth day?—Yes.

And they had evening and morning without the sun?—I am simply saying it is a period.

The Creation might have been going on for a long time?—It might have continued for millions of years.

Yes. All right. Do you believe the story of the temptation of Eve by the serpent?—I will believe just what the Bible says. Read the Bible and I will answer.

All right, I will do that: “And I will put enmity between thee and the woman, and between thy seed and her seed, it shall bruise thy head, and thou shalt bruise his heel. Unto the woman he said ‘I will greatly multiply thy sorrow and thy conception; in sorrow shalt thou bring forth children; and thy desire shall be to thy husband, and he shall rule over thee.’” That is right is it?—I accept it as it is.

“And God said to the serpent, ‘Because thou hast done this thou art cursed above all cattle, and above every beast of the field; upon thy belly shalt thou go, and dust shalt thou eat all the days of thy life!’” Do you think that is why the serpent is compelled to crawl upon its belly?—I believe that.

Have you any idea how the snake went before that time?—
No, sir.

Do you know whether he walked on his tail or not?—No, sir,
I have no way to know.

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There was no further cross-examination. The Judge ruled that Bryan's evidence be "stricken from the record". Darrow asked for a verdict of guilty. He did so in order that the case might be taken on appeal to the Tennessee Supreme Court. Darrow's request was complied with. Scopes was found guilty and fined a hundred dollars. The Supreme Court, on technical grounds, allowed the appeal. The test case therefore ended in the success of Scopes. To what extent that success was due to the tactics and cross-examination of Clarence Darrow every student of the case must decide for himself.

XVII

THE MURDER OF MRS. FOX

Cross-examination of a Matricide

SIDNEY HARRY FOX was convicted on March 21st, 1930, of murdering his mother, Mrs. Rosaline Fox, at the Hotel Metropole, Margate, on Wednesday, October 23rd, 1929.

Sidney Fox was a young man whose sole income at the material time was a war pension of 8s. a week. He was an undischarged bankrupt. His mother, with whom he had been living since March 1929, had a pension of 10s. a week, and no other means. On October 16th mother and son took two rooms at the Hotel Metropole, Margate, having spent the previous night at the Savoy Restaurant, Dover, where they incurred a debt of 14s. 6d., only 4s. 6d. of which did they pay. Immediately before this they had stayed for four days at the County Hotel, Canterbury, where a balance of £2 16s. remained unpaid when they left.

On October 22nd Sidney Fox went to London, and while there arranged for the extension of certain accident policies on his mother's life. These were policies under which £3,000 would become payable to Fox in the event of a fatal accident to his mother. Sidney Fox's new arrangement extended the life, or cover, of these policies until midnight, October 23rd. Fox returned during the evening of the 22nd to the Hotel Metropole with these extended policies in his pocket. He and his mother were now occupying adjoining rooms, Sidney in Number 67, and Mrs. Fox in Number 66, with a communicating door between the two.

On Wednesday, the 23rd, about 11.20 p.m., Fox came rushing down, calling out, "I believe there is a fire. Where is the 'boots'?" Those who hastened upstairs found that his belief

was indeed well founded. Mrs. Fox's room was filled with dense smoke. The door leading to room 67 was shut, as was the outer door of 66. When, despite the choking atmosphere, Mrs. Fox's bed was approached, it was found that the old lady was dead, and that there was a mass of charred newspaper lying under a burning armchair.

At the ensuing inquest on October 24th a verdict of accidental death was found, and on the following day Sidney Fox left the hotel, with his bill unpaid. It was not long before suspicion was aroused, and Scotland Yard called in, with the result that Mrs. Fox's body was exhumed on November 9th. Sir Bernard Spilsbury's report led to the arrest of Fox, and on March 12th he was tried for murder before Mr. Justice Rowlatt. Leading counsel were—for the Crown, the Attorney-General (Sir William A. Jowitt, K.C., M.P.) and Sir Henry Curtis Bennett, K.C. Mr. J. D. Cassels, K.C., appeared for the accused.

The case for the prosecution was thus summed up by the Attorney-General.

“The prosecution present this case as being a case in which there is one possible explanation, and only one possible explanation, of the death of Mrs. Fox, and that explanation is that she lay on her bed that night on October 23rd refreshed as she had been by a half-bottle of port, sleeping drowsily, perhaps; that there entered room 66 by the communicating door, her son; that he went to the bed, that he stretched out his hand and put his hand upon her neck, and possibly with his other hand pressed the pillow down upon her face, and so brought his mother's life to an end. Having done that, constrained as he was to construct some explanation of her death, he then proceeded to make a fire so as to make it appear that her death, which in fact had taken place in the way I have described, was a death as the result of a fire.”

The Attorney-General also said, “The case for the prosecution is this, that on October 23rd last year he strangled his mother, and strangled her in order that he might reap financial benefit by her death. . . . You have a man coming back to Margate in desperate financial straits with two policies in his pocket, one for £2,000, and one for £1,000, which would become payable

if by any chance his mother died by violent external means during the following day."

The defence was that the fire in room 66 was purely accidental; and that Mrs. Fox's coughing and fright, caused by the smoke and fire, resulted in her sudden death through heart failure.

There was a strong conflict of evidence between the medical experts as to the true inference to be drawn from the condition of Mrs. Fox's body. Sir Bernard Spilsbury was definitely of opinion that the cause of death was strangulation. The experts called for the defence took the view that Mrs. Fox died of heart failure accelerated by shock, and that there was no evidence from which strangulation could properly be deduced.

Sidney Fox was examined in chief by Mr. Cassels, and cross-examined at length by the Attorney-General. In the course of this cross-examination it will be seen that all the vital parts of Fox's own story are very clearly brought out.

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FROM THE CROSS-EXAMINATION OF S. H. FOX
BY THE ATTORNEY-GENERAL, SIR WILLIAM JOWITT, K.C.

How much money had you on the evening of 23rd October?—

I cannot say exactly, but about £1.

Had your mother any money?—So far as I know, she had no money.

Did you get any money in London?—I borrowed £1 from a friend, Mr. Gordon Campbell, the previous afternoon before half-past four. I am prepared to give his address if necessary.

Was that all you borrowed? Was that all the money you had?—I borrowed no other money in London, but I had some loose change, probably about £1. I came back to Margate by train, and on the Wednesday afternoon I cashed my mother's and my own pension at Dover.

If your mother had not died on the night of the 23rd, what were you going to do on the 24th?—On the following day it was

our intention to go to London. It was my intention to stay in London with a friend, and my mother was going to stay with some cousins named Rayner in Duncan Road, Highgate.

I was going to stay with Mr. Luckson, a friend of mine. Had any arrangements been made about those visits?—No, but we always had open invitations.

You and your mother had a joint income of 18s. a week?—Yes. Had you any other source of income whatever?—No, I had pawned a good many things.

Was there anything left?—Our furniture in store in town, and in store elsewhere. It could have been sold.

You mean to tell us you were visiting hotels and had money or money's worth all the time?—I do.

Where was your furniture stored?—With Messrs. Bowmans, London, N.W.1.

Under whose name?—In my name.

How long had it been stored?—For about four or five years.

Would the storage charges not exceed the value?—No, I think the bill is about £6.

Where else had you furniture stored?—At Humphrey Brothers, Southsea.

Do you say that at the time you were pawning a safety razor for 1s. 3d. you had this furniture in London?—That is quite true.

Had that furniture not been sold?—Some articles have—about six.

Did a woman named Mrs. Paisky buy that furniture?—She bought several articles.

Did she agree to buy that furniture for £4 3s.?—She agreed to buy some for £4 odd.

Were there storage charges then of £7?—I cannot say. There are storage charges due now.

And did Messrs. Bowmans decline to allow the furniture to be removed?—That I cannot say. I have not seen Mrs. Paisky since.

When did Mrs. Paisky pay you for it?—In August 1929. There are other things there which would cover the storage charges for £7 and far above.

If you really thought that, why were you passing bad cheques?—Mother's furniture was in London.

Did it seem a light thing to you to pass bad cheques?—No, sir. Were you never pressed for your hotel bills?—No.

Do you say that, at this hotel in Margate, you did not intend to slip away without paying the bill?—It was not my intention to leave without any explanation. I was going to tell Mr. Harding¹ that I had not the money to pay, but that at a later date I would pay at the first available opportunity.

Did it occur to you that the plan might lead you into considerable trouble?—I do not think it would have done. I think Mr. Harding would have been prepared to wait.

How were you going to explain your failure to cash your mother's cheque?—Not sufficient funds to meet it.

How would you have dealt with the furniture and house at Lyndhurst?—I think it would have helped to give credit.

Did you anticipate that Mr. Harding might ask some awkward questions?—I did not anticipate that.

Do you remember the little matter of the cheque for £2 which you cashed at Woolls, the chemists?—Yes, that rather worried me.

You knew perfectly well what that kind of conduct was going to lead to?—I did.

How were you going to deal with the matter of the cheque at Woolls?—My intention was to borrow the money from Mr. Luckson and send it to them. I knew the cheque was bound to come back.

Do you admit that the signature of Rosaline Fox on the cheque was written by you?—Yes.

¹ The manager of the Metropole.

In fact it had been signed by you and addressed to a bank at which there was no account at all?—That is right.

Did you anticipate trouble about that cheque?—No, not if the money was repaid. It was, in fact, repaid.

It was repaid with money you borrowed from your solicitor?—Yes.

Did you borrow the money from your solicitor by telling him a pack of lies?—I may have told him one or two untruths.

Did you tell him lies?—Yes.

(Here the thread of the cross-examination is momentarily broken to deal with a point less relevant to the main issue. . . .)

The Attorney-General continues:—

This is no time for lies. You are on your oath?—I realise it.

And that when on oath you must stick to the truth?—I am telling the truth now.

Do you always stick to the truth when on oath?—I do.

The inquest was a solemn occasion?—It was a solemn occasion.

No one realised it more than I did.

There you gave evidence on oath?—Yes.

Let me read you the first sentence: “ My name is Sidney Harry Fox. Until now I have lived at 19 Cathedral Close, Norwich, and I am now moving to End View, Lyndhurst, Hants.”

Is there one word of truth in that except that your name is Sidney Harry Fox?—It is my name. It should be 19 Cathedral Street. The Lyndhurst address is certainly untrue.

Were you doing any work at the time?—No, I could not.

Your tastes, I gather, were, comparatively speaking, expensive.

You liked living in this sort of hotel, and you liked coming down to dinner?—No, I had had a lot of meals out, but not during the last week.

Everything valuable was pawned; you had 18s. a week coming in, and your expenses daily were vastly more than your weekly income?—During the last two months, yes.

That was the situation which confronted you on the night of the 23rd?—I never thought of that.

Do you mean to say on your oath that you never thought of it?—I do not say I never thought of it, I had, of course, because I had not the money to pay.

(There follows a series of questions about a Mrs. Morse whose name will recur later—see footnote below.)

The Attorney-General continues:—

At the date when you made out your mother's will leaving you everything, what had she to leave you?—She had the furniture in store, as I have told you, two diamond rings, three or four gold rings and various pieces of jewellery.

Prior to the date of the will had you ever insured your mother against accident?—No, but I think she took them out herself before that. She told me that she used to take out travel accident policies when she was going on a journey. It was entirely at her direction that I took the policies out and it was she who wanted to know the meaning of "violent visible external means" on the policies. It was for that reason that I asked the agent the exact nature of the accidents which the policy covered.

Have you ever insured anyone else?—Yes, in my position as agent.

Anybody in whom you had any interest?—Yes, Mrs. Morse.¹

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Had you ever heard of a case in which a murderer had killed women by drowning them in a bath?—No, I cannot say I have.

¹ Mrs. Morse was an Australian who had recently (1927) been sharing a flat with Mrs. Fox at Southsea. Fox had served fifteen months imprisonment for stealing some jewellery from this lady; and there had been a curious incident when she had found her room full of gas. For the full story see Miss Tennyson Jesse's introduction in *Trial of Sidney Harry Fox* (Notable British Trials, Messrs. Hodge).

Had you poisoning in a restaurant in your mind?—Yes, they were possible things which might happen to anyone.

Did you say to the insurance clerk when you went for that first policy “Would it include drowning in a bath”?—Yes. Some fortnight before your mother's death did the death of Lady Paget take place?—Yes.

She was an old lady who died as the result of a fire?—I have never met Lady Paget. I do not know.

Is that what the papers said?—Yes, she was reading a newspaper in front of the fire when her dress caught fire. My mother read it out to me.

Did that make some impression on your mind?—No, I did not know Lady Paget. My mother knew her; they had met at the Red Cross.

After your mother's death, did you not comment on the coincidence of their deaths to Dr. Nichol?¹—Yes. It came into my mind after I had collected my thoughts together.

Did you realise when you opened the communicating door that the atmosphere in the room was such as would probably suffocate anybody inside?—If I had stayed in three or four minutes, I should have been suffocated.

So that you must have been greatly apprehensive for your mother?—I was.

Fox, you closed that door?—It's quite possible I did.

Can you explain to me why it was that you closed the door, instead of flinging it wide open?—My explanation for that now is that the smoke should not spread into the hotel.

Rather that your mother should suffocate in that room than that smoke should get about in the hotel?—Most certainly not, sir.

Why, at the moment when you believed that your mother was in that room, did you trouble one twopenny bit about the

¹ The doctor called to the Hotel Metropole on the death of Mrs. Fox.

smoke getting into the hotel?—I have not admitted that I did shut the door. I very much doubt that I did.

Does it not strike you now as an inconceivable thing to have done?—Not in the panic I was in; I don't think it was.

I suggest the communicating door was closed. You don't dispute that?—I don't know.

Before rushing down you closed the door of your room?—I don't remember closing the door.

And then you passed the door of No. 66?—I must have done so to get down.

Did you open that door?—Not then. What would have been the use?

Will you swear you did not?—Yes.

So that you left your mother, as you say, with the communicating door closed, and with the door of room 67 closed; you passed the door of No. 66, but you did not open that, and you knew that your mother was inside that room?—Yes, I did not stop to open the door. I rushed downstairs to get help, which I think is a reasonable explanation.

Don't you think that before rushing down for help you might have flung the doors open as wide as you could?—No, I don't.

Why not?—Because I wanted to get help as quickly as possible.

Do you say you do not remember whether you closed your mother's door?—I hardly know what I did. It is all very well to try to pin me down to details, but I don't hardly remember what I did do. I was agitated at discovering the hotel on fire.

Discovering the hotel on fire? That was what made you agitated was it?—Yes.

I should have thought that what would have made you agitated was your mother being in that room?—Certainly.

Which is it now?—I do not remember. You cannot pin me down to detail. I cannot remember all that happened that night.

I suggest that if you had wanted to preserve your mother's life you would have flung open the doors?—I tried to get in, and when I could not, I dashed downstairs.

There was one thing between. You closed the door?—I do not remember.

Can you account for telling the witness Wager¹ you did?—I cannot.

Your mother's dresses were found hanging behind the door?—

Yes, I put them there.

Was your mother, then, sitting in her underclothes?—Yes.

But, Fox, you told the coroner at the inquest that you had left your mother fully dressed?—That is partly the truth. I had taken her dress off for her, and I did not say so, because I considered it was an intimate thing to do. I did not mention it with all the people round about, although I am not ashamed of doing it.

And you departed from the truth because you did not wish the world to know you helped your mother off with her outer clothes?—That is absolutely true.

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² Did you tell the coroner that you had had a "boxing-match" because you were apprehensive lest some bruise should be discovered on your mother?—Certainly not. It was friendly play. I held her hands and then let go.

Were you heart-broken at your mother's death?—Indeed I was. Quite stricken down when you knew?—I don't think it is necessary to ask.

¹ Elizabeth Wager, barmaid at the Metropole. Fox told her he shut the door and then ran downstairs for help.

² Fox had told this tale also to Elizabeth Wager. On the 20th October, Mrs. Fox had had some sort of a faint, and a doctor had been called. It may or may not have been a genuine faint, but in any case, on the evening of the 23rd, Fox made this strange remark, that he and his mother had been having one of their sham fights—they often did when she was well.

Did Dr. Nichol show you all the kindness and consideration one individual could show to another?—Yes.

He took you up to the room where your mother was lying dead?—Yes.

That was the most solemn moment of your life?—It was.

And then did you tell Dr. Nichol that your mother had £24 in her bag?—Sometime after I did, which was, of course, untrue.

Were you still heart-broken when you told that lie?—Quite. Why did you tell that lie?—I did not want it to be thought she was staying there without any money.

That was the thing you intended to say the next morning?—Certainly.

Were you scheming and plotting to tell this lie because you thought you would have some claim upon the hotel?—Not at all. It never entered my mind.

Did you think you would make another £25, while you could?—Most certainly not.

With regard to the insurance policies, had you ever taken out policies on your mother's life prior to her making the Will?—No.

Why, if you only wanted to insure your mother against accidents, did you take out one policy for death only?—I was not aware until the policy was actually delivered that it was only an insurance in the event of death.

Did it ever occur to you that it was a piece of amazing good fortune that you had the policies?—Never.

What was your real reason for taking out these policies?—I was apprehensive lest something might happen on a railway journey or by a motor-coach.

Is it the truth about these policies that you were desperately hard up for money?—I do not agree.

That you knew the life you were leading could only come to

one end, and that quickly?—No; it would have ended the same day because we were going to London.
That Mrs. Morse¹ had gone to Australia and you wanted to go to Australia?—I did not want to go to Australia, and I should never have gone in my mother's lifetime.
If your mother had died you were going there?—That was my intention.

Would you have gone to Australia if you could have raised the fare?—I should probably have been there by now.
Did you desperately want to get the money to pay your fare to Australia?—Certainly not.

Do you remember telling a prison official that you were a medical student?—No.

If you did, that was another lie?—Yes.

(A man was then brought into Court.)

Do you remember that man?—Yes.

Do you remember him saying to you “Fox, you have described yourself as a student. What kind of student are you”?—No.

Has your memory gone?—I think that at that time, taking into consideration everything that had happened, and the horrible charge made against me of murdering my own mother, it was not to be wondered I could not remember everything.

Did you reply “Medical student”?—I do not remember.

Is it another lie?—If I said so.

Did you go into your mother's room on the night of October 23rd after she had gone to bed?—I did, to try to get her out.

Did you go in before there was a fire at all?—Certainly not.

Did you go towards the bed before there was any fire?—No.

¹ Mrs. Morse, mentioned earlier, had apparently taken fright. She had at one time made a will in Fox's favour, now rescinded. Divorce papers were served on Fox while he was under sentence of death, from Captain Morse, but the general inference from Fox's constant references to Australia is that he thought at that time that he could probably win back the lady's affections if he followed her to Australia.

And stretch out your hand against your own mother?—Most certainly not—horrible.

Did you then start a fire?—Certainly not.

Did you move that cane chair¹ back to the window?—Most certainly not.

Did you go out of that room into your own room, shut the door and then give the alarm?—No, no—decidedly not.

Did you destroy your mother on the night of October 23rd in order that you might reap £3,000 from those insurance policies?—Most certainly not. It is a horrible suggestion—horrible.

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The jury, after consulting together for an hour and thirty-two minutes, returned a verdict of "Guilty". Fox was sentenced to death, and his execution followed.

¹ A small cane chair, with one leg burned, was found in the room, not near the site of the fire, but under the window. From its position (if no one had moved it during the attempted rescue of Mrs. Fox) it was clear that someone had been in the room *after* the fire had started, and had moved it.

XVIII

TRIAL OF MRS. DUNCAN

“A Materialisation Medium”

IN March 1944 Mrs. Helen Duncan was tried at the Old Bailey on an indictment which alleged that between December 1st, 1943, and January 19th, 1944, she conspired together with certain other persons “to pretend to exercise or use a kind of conjuration, to wit, that through the agency of the said Helen Duncan spirits of deceased persons should appear to be present in fact in such place as the said Helen Duncan was then in, and that the said spirits were communicating with living persons then and there present, contrary to section 4 of the Witchcraft Act 1735”.

There were other counts in the indictment, but on the above count only was a verdict taken, and on that count Mrs. Duncan was found guilty, as also were the other defendants.

The trial was a very remarkable one, in which a large number of witnesses gave evidence, obviously in good faith, that through the mediumship of Mrs. Duncan they had seen and conversed with deceased relatives and friends. Some also spoke of having seen the materialised forms of animals and birds. On the other hand, witnesses for the prosecution were convinced that deception was being practised.

The prosecution was instituted as a result of a séance held by Mrs. Duncan at Portsmouth on January 19th, 1944. At that séance a light was switched on by one of those present, Mr. Worth. A policeman named Cross thereupon looked into the medium's cabinet and saw, according to his evidence, Mrs. Duncan standing between the curtains. She was hurriedly pushing a white cloth down her front towards the floor. He seized her and reached down for the sheet, which he also described as

being similar to butter muslin. It was pulled away from him, and disappeared in the direction of the audience. When the lights were switched on, Mrs. Duncan was bending down putting on her shoes. She complained of being ill and asked for a doctor.

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The trial took place before the Recorder of London (Sir Gerald Dodson). Counsel for the Crown were—Mr. John Maude, K.C., and Mr. Henry Elam. Mr. C. E. Loseby and Mr. J. Simpson Pedler appeared for the Defence.

Mrs. Duncan herself did not give evidence. According to her counsel, her defence was this—“I have held myself out as a materialisation medium. I have said it, not once but a hundred times. I have done it over a period of more than ten years. . . . I give evidence of continuity of life, that people supposed to be dead were not dead at all, and I scientifically proved it.”

As the person round whom the trial centred could not be cross-examined, since she was not called as a witness, some extracts from the cross-examination of other witnesses on both sides must serve our purpose.

For the prosecution the first witness, Mr. S. R. Worth, a Lieutenant in the R.N.V.R., gave evidence in chief of having attended séances with Mrs. Duncan. He had seen a white-draped figure which was said to be the medium's guide, Albert. He had also seen other forms, amongst them one described as “Peggy, the little helper who helps sometimes”. He said she was “quite a bulky form”, and that she sang “Loch Lomond”. He also saw what were said to be a materialised cat, parrot and rabbit. He admitted switching on the torch.

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FROM THE CROSS-EXAMINATION OF MR. WORTH BY MR. LOSEBY

Mr. Loseby: Whether it is true or not, were you told that a materialisation medium takes her or his life in their hands every time that he or she sits?—I had been told that.

Had you been told that one of the best materialisation mediums

recently was totally blinded by a sudden interference when he was in a trance?—No, sir.

Did you know that materialisation séances only had one main point?—Such as what?

To provide proof of continuity of life and survival. Had you been told that?—I do not think I had been told it like that.

By the 14th¹ did you consider that you had made yourself a competent observer?—I should imagine so, sir.

You were a competent observer, although you had never been to a materialisation séance before?—No, sir.

You had never been before?—No, sir.

You have been to two now, have you not?—Yes.

Do you think it is just possible that, if you had familiarised yourself a little more with the circumstances and the kind of thing you might expect to see, you would be a still more competent observer?—I think so.

Anyway, on the 14th do you think you were sufficiently competent to either approve Mrs. Duncan as a genuine sitter, or, on the other hand, to denounce her? I want to know your own view of yourself as an observer.—I was ready to believe something which I personally considered was a genuine thing with regard to this business; but what I saw convinced me eventually that it was not true.

Anyway, the shock came on the 14th?—Yes.

And you came to the conclusion that Mrs. Duncan was a fraud?—Yes.

Did you tell anyone of that conclusion?—Yes, sir.

Who was that?—I don't know; some people who were standing around. . . .

(Questions followed about two forms represented at the séance to have been the Aunt and Uncle of witness.)

¹ The first of the two séances attended by Mr. Worth.

Did Peggy ("the little helper") come out from the curtains and later go back into the curtains?—The curtains parted as she came out, and they parted as she went in.

• • •
And Peggy has got a high-pitched voice? Is that right?—Yes. And a very girlish form?—I beg your pardon, sir, no. . . . I saw quite a bulky figure.

• • • Do you mean you saw Mrs. Duncan coming out from the curtains?—I did not say that, sir.

But you were suggesting, were you not . . . that the bulky figure was Mrs. Duncan? Or did I misunderstand you?—I did not mention any name.

No, no, but what did you mean?—I said a bulky figure, and I mean a figure of large proportions.

• • • Tell us quite plainly what you do mean.—I say I saw a bulky figure come out of the curtains, and then it went back again, and I do not know whether it was Mrs. Duncan or anyone else.

• • • Did you not intend to give me the impression that the bulky figure was Mrs. Duncan, pretending to be Peggy?—I intended to convey, sir, that the bulky figure I saw did not look like the small figure of a young girl.

Did it look like Mrs. Duncan with a sheet over her?—It looked like a bulky figure with a sheet on it.

• • • Looking back at it now, do you think it was Mrs. Duncan who came out from the curtains?—It is possible, sir.

• • • In that red light it must have been very difficult for Mrs. Duncan to look like a young girl? How high was the figure?—I should say about five feet.

(Questions followed about other alleged materialisations on January 14th, and about the séance on January 19th, when the witness switched on the torch. It was put to him that he had given a completely untrue account of what ensued, to which he replied, "Thank you, sir.")
• • •

After other witnesses had given somewhat similar evidence, and had been duly cross-examined, the case for the prosecution was closed.

For the defence, Mr. Homer, one of Mrs. Duncan's co-defendants, gave evidence as to the appearance of materialised forms at the séances at which he assisted, including that of January 19th.

FROM THE CROSS-EXAMINATION OF MR. HOMER BY
MR. JOHN MAUDE, K.C.

Mr. Maude: Where have you observed Albert (the spirit guide) from?—The front seat.

Why did you always sit in the front seat?—To attend to Mrs. Duncan when she comes out of the cabinet, to put her in my seat.

. . . How many times have you seen Albert?—Many times. Have you seen Albert twenty times?—Yes.

How big a beard has he got?—Not a thick growth, but (pointing) from here to there.

What happens when you get beyond that?—Is there white stuff round it?—Just the face.

What happens outside the beard?—A spirit shroud.

Do not let us call it that for a moment. Is it a white thing?—An ectoplasmic shroud.

Is it identical with what you would get if somebody had a white cloth over their head hanging down?—No, sir.

What is the difference?—It is a very white and fine substance.

What is the difference between that and butter muslin?—I would not call it butter muslin.

Does it look very like butter muslin?—Very like.

Is there anything else it looks more like?—No.

Then are we not right, it looks very like a shroud made of butter muslin?—Yes.

Do Albert's boots appear?—No, sir.

Do any feet ever appear?—I have never seen any.

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The Recorder: Is the ectoplasm sometimes apparently quite severed from Mrs. Duncan's body?—No, it is not severed at any time.

What about when the form comes outside the curtain for two or three feet?—It is still connected with Mrs. Duncan.

Mr. Maude: Can you see that?—I have seen it.

What have you seen?—Just like a tube.

• . . . If you have a figure standing up and there is a tube from it, from which part does the tube go back into the curtains?

• . . . Top, middle or bottom?—Usually about the middle.

• . . . Think how impressive it would be if the curtains were not closed, and there was Mrs. Duncan sitting in white with a tube from her with Albert standing at the side. Why does she wear black?—I could not say, sir.

• . . .
Another witness for the defence was Mrs. Tremlett. She spoke of several materialisations, amongst them that of her husband and those of a cat and a parrot.

• . . .
FROM THE CROSS-EXAMINATION OF MRS. TREMLETT BY
MR. ELAM

Mr. Elam: Tell me about the parrot. Had it got a name?—“Bronco”.

Could you see that well from where you sat?—Yes.

• . . Could you see its eye or its beak?—Yes.

It did not fly at you?—No.

Could you see its body?—Yes.

Did it move?—Yes.

Did it talk?—It said, “Pretty Polly?”

What colour was it?—White.

Any other colour?—I did not notice any other colour.

What colour was the cat?—White.

Could you see its face?—Yes.

Whiskers?—I was too far back to see that.

. . . Did Shirley (the very young girl) recite?—I remember Shirley recited.

What did she recite?—“This little piggy went to market.”

How far did the piggy go?—All the way.

Not just the first line?—No.

“Roast beef”, and all that?—Yes.

And the little piggy that had none?—Yes.

Some people have said that she never got farther than the first line, but that would be quite wrong, would it?—I should say so.

. . . Why does a medium need a guide?—For the same reason that you want a telephone here if you want to speak to someone else in a different place.

. . . Does every medium have a guide?—Yes.

. . . Did you on all those occasions see any white substance?—The ectoplasm?

Call it what you like. Did you?—Yes, I have seen it.

Was it round your husband?¹—Certainly.

Did your husband seem to be enveloped in this white substance right down to the ground?—Yes.

Could you see his feet?—I am afraid I did not notice; I was looking at his face.

Could you see the stick?—No, not when he came out.

Or his side?—He was absolutely full face to me.

Did you at any time see his side?—No, he walked straight up to me.

When he walked away, did he turn round?—No.

¹ The witness had stated that her husband had appeared in a materialised form.

Did he seem to go backwards?—He went backwards and then went through (the curtain).

You never saw his back at any time?—No.

• • • • •

A large number of other witnesses having given evidence as to their certainty of the genuineness of Mrs. Duncan's materialisations, there was also called Mr. Frederick C. Hennen Swaffer, a well-known journalist. He said that he had observed the phenomena of Mrs. Duncan on five or six occasions, and had seen ectoplasm pouring apparently from her nostrils into a sort of thick rope. He always saw ectoplasm at her séances. It was totally different from butter muslin. He had seen Mrs. Duncan tied up by forty yards of sash-cord and handcuffed, with her two thumbs tied together. Even then the phenomena persisted. It took a magician eight minutes to tie her up, and she was freed, without assistance, in three minutes by the spirit guide. No actor could simulate the phenomena he saw.

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FROM THE CROSS-EXAMINATION OF MR. F. C. HANNEN
SWAFFER BY MR. ELAM

Mr. Elam: You are rather an expert on this, aren't you?—On what?

On Spiritualism?—Well, I've sat for twenty years. I have a home circle of my own.

Are you pyschic yourself?—No.

Have you acted as a medium yourself?—No.

Have you got a guide?—Oh, yes.

What guide is this, may I ask?—My guide is an Egyptian.

We've had a Red Indian. Is yours a man or a woman?—A man.

May I ask the name?—Darak Ahmed.

. . . Have you investigated fraudulent mediums?—No, I have investigated mediums.

Have you found any to be fraudulent?—No.
Not one?—No.

. . . Have you investigated any mediums that have later turned out to be fraudulent?—I have investigated mediums who have been accused of being fraudulent. From the beginning of our case the accusation has been brought against us. Any fool, my Lord, can charge you with anything.

You have never caught one yourself?—No.

Were all the tests that Mrs. Duncan was subjected to all that were possible?—Everything that could be done, yes.

What about any electrical control?—How can there be electrical control in a room to which Mrs. Duncan is a stranger in a friend's house?

Were any electrical controls used?—No, we sat in a room.

Did anybody have hold of her?—No.

Were you present when another medium, Rudi Schneider, was investigated?—Yes, I sat with Sir James Dunn, Lord Charles Hope and some other people.

. . . You will agree that tests were applied there which were not applied to Mrs. Duncan?—The secretary was still walking about the room. . . . In fact I wrote to Harry Price¹ and said it was no test.

You didn't like the test?—I objected to it because it was not a test; his secretary was still walking about the room, and I said it was ridiculous.

She was covered with phosphorus, was she not?—Not the night I was there, no, no, no.

Was something having hold of Rudi Schneider?—Not when I was there; I saw phenomena.

I was exploring your answer that every test that could possibly be applied was applied to Mrs. Duncan. Are you seriously telling us that there is no other test which you can think of

¹ A well-known psychical investigator.

that could have been applied to Mrs. Duncan?—Nothing that mattered.

Was she ever X-rayed?—I can't produce them. I am told.

Was she X-rayed while you were there?—No, you don't do it every time.

Was she given any coloured pill to see if the ectoplasm was coloured when it came out?—It has been done to her, but not at this time.

Did figures come out of the cabinet when Mrs. Duncan was sitting?—In 1932, yes: on one occasion eight.

Did the curtains move?—Yes.

Who moved them?—The spirits, as they came out.

Did they move when the spirits went back again?—Yes.

You say Mrs. Duncan has a normal stomach.¹ Have you got any medical qualifications?—No, but here are the photographs.

Have you ever made any experiments with anybody swallowing butter muslin?—I have tried it myself.

How much? (*Witness points to the butter muslin*).—May I try to swallow that?

The Recorder: No. . . . You shall not be bothered with the cheese-cloth.

Mr. Elam: How did you get on with your experiment?—What with?

With the butter muslin.—I wish I had.

I thought you said you tried to swallow some?—When we heard of this silly cheesecloth thing we used to play about with it and try to swallow it.

Had you experimented before this case with butter muslin in a red light?—I never heard of it until Mr. Price invented this new lunacy, cheesecloth.

¹ This refers to the theory that Mrs. Duncan might swallow butter muslin or cheesecloth and then regurgitate it.

If somebody puts a light on suddenly, the ectoplasm rushes back into the medium, does it?—Yes.

. . . If it is genuine ectoplasm it would rush back into the medium's body at once, would it?—Yes.

. . . You hold very definite opinions about this matter, don't you?—I have seen genuine phenomena. I am a trained observer; my word is taken when I report things.

You hold very definite opinions about Spiritualism, don't you?—My opinions, very fixed, are based on evidence which is incontrovertible.

Do other dramatic critics always agree with your opinions about a particular play?—That is not a matter of fact.

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After twenty-four minutes consideration the jury returned a verdict of "Guilty". Mrs. Duncan was sentenced to nine months imprisonment.

XIX

THE BELSEN TRIAL

Concentration Camp Questions

THIS was one of the War Crime Trials that followed the Great War of 1939-1945. It was held at Lüneburg, and occupied fifty-four days in September, October and November 1945.¹

The Military Court, before which the trial took place was constituted by Royal Warrant. It consisted of five British officers, assisted by C. L. Stirling, K.C., sitting as Judge Advocate. The President was Major-General H. P. M. Berney-Ficklin, C.B. The Court was concerned with the trial of persons accused of having either personally killed or ill-treated Allied nationals, or with having been so concerned with such killings or ill-treatment as to share responsibility for it, at Belsen and Auschwitz concentration camps.

Between forty and fifty persons were charged, thirty of whom were convicted. We shall here only be concerned with very brief extracts from the cross-examination of Josef Kramer, who was for a time in authority at Auschwitz, and, later, Kommandant of one section of Belsen camp, and of Irma Grese, who held a position of high authority at Auschwitz, where she was the Kommandant of working parties, and was for a time in command of the women's punishment quarter there, before being transferred to Belsen.

Both these prisoners were alleged to have been guilty not only of murder, but also of having treated the internees with the grossest imaginable brutality. In their evidence-in-chief they denied many, but not all of these allegations.

¹ This trial is fully reported in the *Belsen Trial*, edited by Raymond Phillips, M.C., M.A., in the *War Crimes Trials Series* (W. Hodge & Co.).

FROM THE CROSS-EXAMINATION OF JOSEF KRAMER BY
COLONEL T. M. BACKHOUSE, M.B.E., T.D.

Was (the gas chamber at one of the camps) constructed under your instructions, and did you quite deliberately gas eighty prisoners in that gas chamber?—Yes, on the orders of Reichsführer Himmler.

Was that for the purpose of supplying these bodies to Dr. Hoess in order that he might experiment upon them?—I do not know what he did with them. My orders were to supply these bodies for Dr. Hoess at the University of Strasbourg. They were the orders of the highest military authority. I can imagine what they would have done to me if I had disobeyed those orders.

Are you suggesting that there was a law in Germany which allowed prisoners to be murdered simply so that doctors could experiment on their bodies?—I do not know anything about such a law.

You knew perfectly well that it was a crime you were committing?—No.

Did you actually force these people into the gas chamber yourself?—Yes.

Did you actually put the gas in yourself and then watch them inside as they died through a peephole you had made?—No.

. . . Did you not describe that the women continued to breathe for about half a minute?—One could hear that. It was not necessary to observe.

. . . Was the purpose of the gas chambers not a part of the determination of your party to try and exterminate the Jewish race, and all the intelligent people of Poland?—I do not know.

. . . Did you never protest against your camp being used for this purpose?—If I had raised a protest, probably I would have been arrested myself and put behind barbed wire.

Did you prefer to be a party to wholesale murder rather than to be arrested yourself?—I did not partake in this mass murder.

Do you think that anyone is entitled to give or to execute orders for the mass murder of innocent people?—Probably there must have been somebody who issued these orders. I myself never saw them and have nothing to do with it.

I put it to you that not only were you present at these selections, but you took an active, and very active, part in making the selections yourself?—That is not true. It is a lie.

. . . You heard witnesses here in person, one after another, and affidavits of dozens of other people read, with regard to the beatings which went on at Auschwitz. Do you say that never happened?—Yes.

How often were you in the camp that you commanded?—From seven in the morning till seven at night.

Then, if this happened, you must have seen it?—In that camp which I commanded, certainly.

You heard Grese's statements read, in which she said she carried a whip and used it consistently?—That is exaggerated. It was not so.

I put it to you that day in and day out, from morning to night, prisoners were beaten regularly in this camp of yours?—It is not so.

Let me suggest to you that you beat so many people that you cannot remember any particular one?—I can only say I have not beaten any prisoner.

Do you remember Ehlert (*a former witness*) in her statement said that she had often seen prisoners beaten at Belsen, and that the conditions were a shame and a disgrace?—Yes, but I am astonished that she did not report this to me.

Do you remember her saying that you were responsible for the conditions because, among other reasons, on one occasion, "When I complained of the increasing death rate to

Kramer, he said, 'Let them die, why should you care'?"?—Firstly, I did not see any reason why I should give a subordinate any explanation about the conditions of the camp, and secondly, what she says my answer was is not true.
. . . Did you ever go into the Hospital and see the conditions there? Did you see the conditions in the huts?—Yes.
Did you watch these people slowly starving and dying?—Yes. That is to say, I did not look at it, but I saw from the daily reports how many people were dying every day.
. . . Do you know how many thousands were still lying unburied in the camp when the British came?—No. It was reported to me by the Lagerführer two days before the British troops arrived that there were no more corpses lying about in the men's compound.

Do you know that the British found 13,000 corpses lying unburied in that camp?—I cannot believe it.

• . . .
The Judge Advocate: While you were serving did you receive any rewards or promotions for your service to the Reich?—Before the war I held the rank of Obersturmführer, and in 1942 was promoted to Haupsturmführer—that, I believe, is a Captain. The two decorations which I received were the Kriegsverdienst-kreutz, 1st and 2nd class, in 1942 and 1945.

• . . .
FROM THE CROSS-EXAMINATION OF IRMA GRESE BY
COLONEL T. M. BACKHOUSE, M.B.E., T.D.

. . . I suggest this to you: that when you went out with the working parties you made a habit of beating women and of kicking them, and you enjoyed it?—And I say that you are badly informed about me, and that it is a big lie.

Your sister said that when you were a little girl you were frightened to stand up for yourself, and you ran away to

avoid a fight. I now suggest to you that you found it great fun to hit somebody who could not hit back?—No.

Gertrude Diament said in her deposition that your favourite habit was to beat women until they fell to the ground, and then kick them as hard as you could with your heavy boots?

—That is a lie. Perhaps it is her habit to lie.

You affected heavy top-boots, and you liked to walk round with a revolver strapped on your waist, and a whip in your hand, did you not?—I did not like it.

You thought it was very clever to have a whip made in the factory, and even when the Kommandant told you to stop using it, you went on, did you not?—Yes.

What was this whip really made of?—Cellophane paper plaited like a pigtail. It was transparent, like white glass.

The type of whip you would use for a horse?—Yes.

Then most of these prisoners who said they saw you carrying a riding-whip were not far wrong, were they?—No, they were not wrong.

Did the other Aufscherinnen have these whips made, too?—No.

It was just your bright idea?—Yes.

In Lager “C” you used to carry a walking-stick too, and sometimes you beat people with the whip and sometimes with the stick?—Yes.

Were you allowed to beat people?—No.

So it was not a question of having orders from your superiors to do it. You did this against orders, did you?—Yes.

Were you the only person who beat prisoners against regulations?—I do not know.

Did you ever see anyone else beat prisoners?—Yes.

Did you sometimes get orders to do so?—No.

Did you give orders to other Aufscherinnen working under you to beat prisoners?—Yes.

Had you the right to give such authorisation?—No.

(*Questions were asked about the selection of persons for the gas chamber.*)

When these people were parading they were very often paraded naked, and inspected like cattle to see whether they were fit to work or fit to die, were they not?—Not like cattle.

You were there keeping order, were you not, and if one ran away you brought her back and gave her a beating?—Yes.

. . . I suggest to you that you carried on at Belsen just as you had done at Auschwitz, beating, kicking and making people kneel, and making people hold stones over their heads?—No. Only once I gave orders to a kitchen working party to do some sport, but, of course without holding stones in their hands.

Did you not make one Kommando do sport for half an hour because one of the girls dropped a piece of rag as they were marching in from work?—No. It was because somebody threw two parcels away, each containing 3 lb. of meat.

Did you realise that people were dying all around you at Belsen?—Of course I realised it.

Did you realise the amount of food that these prisoners were getting, and did you think that that was a proper way to treat them?—No.

. . . Is it not true that you tried to curry favour with the prisoners when you knew that the British were coming?—No, never.

You had always treated them very severely, had you not?—Yes.

.

Both Kramer and Grese were convicted and subsequently hanged.

XX

THE LYNSEY TRIBUNAL

Cross-examination of a very Buoyant Witness

THIS was a Tribunal established by virtue of a Resolution passed by both Houses of Parliament for "enquiring into a definite matter of urgent public importance, that is to say, whether there is any justification for allegations that payment, rewards, or other considerations have been sought, offered, promised, made or received by or to Ministers of the Crown or other public servants in connection with licences or permissions required under any enactment, regulation or order, or in connection with the withdrawal of any prosecution, and, if so, in what circumstances the transactions took place, and what persons were involved therein".

Of this Tribunal Mr. Justice Lyskey was appointed Chairman. The other Members of the Tribunal were Mr. G. Russell Vick, K.C., and Mr. Gerald M. Upjohn, K.C. The Attorney-General, Sir Hartley Shawcross, K.C., M.P. (instructed by the Treasury Solicitor), appeared on behalf of the Tribunal. Other Counsel represented interested parties; among them, Mr. H. V. Lloyd-Jones and Mr. Gabriel Cohen, for one, Mr. Sydney Stanley, and Mr. A. Aitken Watson, K.C., and Mr. H. J. Baxter on behalf of Mr. John Belcher, M.P., Parliamentary Secretary to the Board of Trade.

It would be utterly impossible in the space available to give anything like an accurate summary of the matters enquired into. This has been admirably done by Mr. Wilfrid Marsh in his short book *The Story of the Lyskey Tribunal*.¹ Here it is proposed merely to illustrate the extraordinary buoyancy of one witness,

¹ Alvin Medman, 1949.

Sydney Stanley, under some fifteen hours of vigorous cross-examination by the Attorney-General. Of this man Sir Hartley Shawcross said in his opening speech: "He certainly appears to have secured at least some part of what seems to have been a not inconsiderable livelihood by representing to those who had dealings with Government Departments that, whether from bribery or otherwise, he had great influence with those Departments and could affect Government action in favour of his friends and in favour of his clients. . . . These 'contacts', as I think he called them, he certainly did nothing to conceal. Indeed, with less or with no justification he claimed to be on terms of close friendship with certain . . . Ministers . . . and indeed with the leaders of all political parties. It is on record that one of those who will be called to give evidence before you said about him that 'he talks as if he knew everyone except His Majesty, but he would probably put him in if he were pressed'."

It is thought that, with a few explanatory notes, some of his answers to the Attorney-General's questions will show that this was a very just appraisement of Mr. Stanley. He was a witness whose mind ran on superlatives. He was not interested in "ten or twenty dresses," he always sold "thousands." He could get "all the money you want in the world to fight the Communists." He regarded £300 or £400 as "chicken-feed."

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FROM THE CROSS-EXAMINATION¹ OF SYDNEY STANLEY BY THE ATTORNEY-GENERAL, SIR HARTLEY SHAWCROSS

Attorney-General: Sydney Stanley, what is your address?—
No. 4, Aldford House.

Chairman: You had better get the correct name.

Attorney-General: How long have you gone under that name?—
Over twenty-five years that I know of.

¹ In the course of the proceedings the Chairman said, "Whatever the technical position, it has been quite clear that the Attorney-General has been examining and cross-examining."

You have enjoyed (if that is the correct expression) a number of other names during that period?—Not that I know of, except Stanley Rechtand.

That was the name under which you took your present address, was it not?—I did.

. . . Under what name were you born?—I do not know.

Do you not? Do you know what your father's name was?—

My father's name apparently was Kohsyzcky.

. . . Up to the outbreak of war were you acting generally as a kind of Commission Agent?—Yes.

. . . Right through the war you acted as a Commission Agent to promote contracts?—I would not say promoting contracts.

Assisting?—Assisting and completing contracts.

. . . Were you travelling about the country?—All over.

Mainly in the clothing trade, or in connection with other trades?—Nothing else, only the clothing trade.

Then after the end of the war did you continue in those activities?—No, I did not.

You changed your sphere of activity?—I did.

What did you change it to?—Well, I wanted to go back and start selling dresses, and so on, but I did not get a chance to do so, so instead I started, to begin with, trying to buy and sell stores.

Buy or sell what?—Stores—departmental stores.

You changed your activity from selling dresses to selling departmental stores?—May I once again say to you, sir, when you say selling dresses, I was never interested in selling ten or twenty dresses; I always sold thousands.

We quite appreciate, Mr. Stanley, I am sure, that you are in a very big way of business. . .

(Evidence was adduced of dinner-parties given by Mr. Gibson, then a Director of the Bank of England, and attended by Mr. Belcher and other Members of Parliament.)

At one of those dinner-parties did you discuss the possibility of founding some organisation for the purpose of combating Communism?—I did. . . . We discussed then and there in what way we could go to work. So I said then and there, “All your talk is very cheap. Why don’t you do something about it?” So they said they would want money. I said, “I can get you all the money you want in the world to fight the Communists,” and this took place at that party at the Garrick Hotel.

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Did you introduce Mr. Gibson to persons in the business world?—I did.

In what connection?—Well, Mr. Gibson came to see me . . . and he said, “Stanley, you must help us. We are in trouble in the export” . . . and I used to take Mr. Gibson to the biggest people in this country, and they did all they could to assist Mr. Gibson as requested.

. . . To whom did you introduce him?—I introduced him to one gentleman with a turnover of sixty millions a year in the export.

Might we have his name?—I think I ought to write his name down, if I may.

Do not be so shy, Mr. Stanley.—I am not so shy, but I do not want to bring in innocent people who are trying to help this country, and have their names all over the place.

.

You have told us about effecting these introductions. During that time did you ever suggest or offer to either Mr. Belcher or Mr. Gibson or anyone else any remuneration?—Oh, my God! How dare you suggest that?

Never? Did you give them presents sometimes?—I did.

But never money?—Money? They would kick me right out; it would be the end of the friendship.

. . . But did you give Mr. Gibson some cigars?—I did. I gave him more than that—I gave him some food at one time.

From time to time you gave them presents?—It depends what you call presents.

I shall be referring to them more in detail later on.—Please do.

. . . You went to see Mr. Belcher about a great many important matters?—I did.

. . . It was very useful in such matters to have the ear of the Board of Trade and easy access to the Board of Trade?—I am not denying it.

You, of course, had both?—I would not say that.

Well, we will see.—Sometimes yes and sometimes no.

. . . You did present yourself constantly as a person with friends in high quarters?—Oh, I did.

During the lifetime of the existing Government you claimed to know a great many of the leading Members of the Government as personal friends?—I still claim it now.

And with notable broad-mindedness . . . you made similar claims in regard to many leading Tory politicians?—I would not say many; a few.

. . . You have introduced the name of Lord Woolton?—I did.

And you said that you knew him very well?—I did.

Did you tell the Sergeant of Police at Marylebone Station, who deals with alien matters, Sergeant Oakaby?—That I knew Lord Woolton? Yes.

You told him that?—Yes.

Did you tell him that Lord Woolton had agreed to sponsor your application for naturalisation?—I never applied for naturalisation.

I did not ask you that—I asked you whether you did tell Sergeant Oakaby that Lord Woolton had agreed to sponsor your application for naturalisation.—I do not think I said that; it was never raised.

You see, the answer is either yes or no. I do not think the

Sergeant is in Court at the moment, but you know him, do you not?—I still say I never recollect saying anything like it to him.

Did you say that to anybody?—No one.

It was quite untrue, was it not?—I had no occasion for saying it.

It was quite untrue, was it not, that Lord Woolton ever dreamt of sponsoring your application for naturalisation?—I would not like to say that either.

. . . Did you from time to time arrange for some well-known person to organise a dinner on some plausible excuse, like somebody's long service in the Labour Party, or somebody's appointment to some particular post?—I did not organise it—they organised it . . . they did the organising, and I was the fool who paid.

You did, in fact, pay on a number of occasions persons whose names appeared to be reputable to organise dinners on your account, did you not?—I paid to the people? Why should I? I paid to the hotel.

You paid to the hotels?—The reason being nobody else wanted to pay.

Is it a usual method of business giving boxes of cigars, bottles of whisky and so on to those with whom you have to conduct commercial negotiations?—Certainly.

You see nothing wrong in it?—Nothing wrong whatsoever.

It eases the way, does it not?—I agree.

There is nothing wrong in doing that, I suppose?—Nothing whatsoever.

With business associates?—Nothing whatsoever.

Or with Government officials or Ministers?—It depends.

It depends upon what type of person he is?—No, no, no.

When you say give presents and give £4,000 or £5,000 you cannot give a Government official any money. . . .

Let me tell you, Mr. Attorney, that at the gathering at Grosvenor House I gave about twenty cigars to Mr. Ernest Bevin, and he saw nothing wrong in it. I did not ask him to declare war on anybody.

. . . You had no official business with Mr. Bevin, had you?—None whatsoever.

. . . To give a man a present of a box of cigars, when you have no relations with that man, may or may not be open to objection. I believe there are some statesmen who sometimes receive them. I am putting to you giving bottles of whisky or boxes of cigars to those with whom you are conducting official business. . . . Do you think that is a proper thing to do?—I said “No”.

You said “Yes”?—But when you say “boxes of cigars”—boxes means a lot, but if I was giving two or three, or occasionally ten cigars, it does not mean boxes.

Or twenty?—Twenty were never given to Mr. Bevin.

.

(The witness described his very elaborate method of cashing cheques with the Greyhound Racing Association. The Chairman having, by means of a few questions, clarified Stanley's meaning, the latter said—“Yes, that is exactly what I have done. I am very thankful to your Lordship for explaining what I could not explain myself.”)

Did you offer to help Mr. Darby (Managing Director of Messrs. Berger and Sons) in regard to an application (for certain building licences)?—Nothing of the sort. What I said was that I would help him as far as advising him was concerned; which I did. I told him to fill in that he was doing a big export trade.

Was this out of pure benevolence?—I would not say that. We had been talking about millions of shares.

Did you say that you would want £10,000 in £1 notes?—Not a word—nothing of the sort. He did mention to me,

“ You can get £300 or £400 or £500 out of it, because I have other people who are helping me and getting quite a lot of money ” When he mentioned £400 or £500 I said to him, “ Look here, Mr. Darby, there is a lot more money to be made in it. Why bother about chicken-feed, £300 or £400? ” I did say that.

•
(Witness alleged that his wife went to America on a trade mission to buy steel for Britain, and trade in exchange British products; he said, “ She was introduced to every big man in America.” He did not give evidence of conspicuous success having attended this mission, but said that Mr. Kirschner, “ one of the greatest multi-millionaires in America ”, would have said to her, if she had bought steel, “ Very well, then send me over a million mantles, a million dresses or a million pairs of boots.”)
•

Did your Counsel, in addressing the Committee,¹ say that you were represented as being almost the Al Capone of the East End in your criminal activities?—Nothing of the sort.

I have the shorthand note of his speech.—Nothing of the sort.

You do not expect my Counsel to say that?

You may not have expected it; it may have come as an unpleasant shock to you.—I disagree with you one hundred per cent.

. . . What I said was that you were represented as being almost the Al Capone of the East End in your criminal activities. That is what your Counsel said?—You say my Counsel said it.

That is your Counsel. I have read out the words that you were being represented as that, rightly or wrongly?—By my Counsel? No, no; it does not matter—I cannot understand.

After having heard that you have been represented, rightly or

¹ A Tribunal dealing with the deportation of Aliens.

wrongly, as the Al Capone of the East End, you left the country, did you not?—I never left the country; I was here all the time.

I put to you a letter from your solicitors?—I heard it yesterday. You left the country at that time enjoying the names, in addition to the ones I have mentioned of Rechtand and Wulkan and the rest of them, also of Mr. Stanley Kruger?—I do not know anything. This is the first time you have mentioned it to me.

Do you not know that this enquiry was into the case of Solomon Kohsyzcky, alias Rechtand, alias Wulkan, alias Stanley Kruger?—I know nothing about it.

Of Bradford?—Of Bradford, I know nothing about it.

You had some business dealings in Bradford?—When did I have business dealings in Bradford? Maybe you know more than I do.

Did you then go to Ireland and eventually come back to this country?—I answered you that I went to Ireland to help this country to send goods over to Ireland.

I put it to you that you fled under the name of Stanley Kruger?—I am sorry, you are wrong. My name, Sydney Stanley, is known to everybody for twenty-five years.

.

Mr. Wilfrid Marsh relates¹ that at the conclusion of the hearing Sydney Stanley was the first man to jump up and clamber over the chairs in the emptying Court to proffer his hand to his chief Inquisitor. “That was a wonderful speech”, he congratulated. “It was magnificent, Mr. Attorney. I think you have done marvellously.” Sir Hartley Shawcross replied, “If you say so, Mr. Stanley, I am sure it must be so.”

The unanimous Report of the Tribunal was published as a White Paper on January 25th, 1949. That part of its finding (with which alone we are concerned) relating to Sydney Stanley

¹ Op. cit., p. 127.

contained these words: "Mr. Stanley is a man who will make any statement, whether true or untrue, if he thinks it is to his own advantage to do so."

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One notable observation made by Mr. Stanley in the course of his cross-examination, must be added in conclusion: "If I am as clever as they say, I ought to be Prime Minister. Then America would owe *us* money".

APPENDIX

These hitherto unpublished notes on cross-examination, and on the characteristics and methods of three of the most famous exponents of that art, are by the late Sir Edward Clarke, K.C., who, as is well known, held one of the most highly distinguished positions in the legal hierarchy of the last generation. He was Solicitor-General, 1886-1892

Although, unfortunately, the treatise is unfinished, it comes from so high an authority that it will, I believe, be found of great interest not only to members of the legal profession, but to any who may be attracted by the subject-matter of this book.

E. W. F.

Cross-examination is one of the most popular because it is one of the most dramatic parts of the work of an advocate.

When a great trial is going on all one's friends want to know when you will be speaking, or when you will be cross-examining the principal witness on the other side, and they generally think they would like best to hear the cross-examination. This is natural, for cross-examination is a duel between the counsel and the witness, and apart from the fact that any moment may bring an answer by which the whole aspect of the case may be changed, the contest and clash of wits, the thrust and parry, the keen question, the guarded answer, a momentary loss of nerve in the witness when he stumbles and seems confused, then a clumsiness in the attack and a sudden recovery of the defence, then a gradual lessening of force on one side or the other until the witness leaves the box and the whole Court feels instinctively how important the issue of the bout must be, all this makes the listening to a fine cross-examination of an important and capable witness a real intellectual treat. And young barristers do wisely in following a strong leader from Court to Court and studying his methods.

Before I speak of those who during the half-century of my work at the Bar were the finest exponents of this branch of the art of advocacy, I think I may usefully make a few observations on the objects and the best methods of cross-examination.

The primary object of course is to destroy the effect of the evidence which the witness has given in his examination-in-chief. But an effective cross-examination goes much further than this. I am speaking of cross-examination upon material facts, not cross-examination to credit which needs to be dealt with separately. And I am speaking also of cross-examination when the case is being tried before a judge and jury. Cross-examination when it is tried by a judge alone is a much simpler matter, and that is why Common-law counsel are taken in to Chancery Courts to cross-examine important witnesses, while I never heard of an Equity counsel, however distinguished, being called in to perform the same service before a jury. When a judge is trying a case alone, with the pleadings lying before him, and is noting the evidence as it is given, and observing with an experienced eye the manner of the witness and his readiness or unreadiness to reply; when he, as the case goes on, is able to dismiss immaterial details, and often indicates the points on which his mind needs to be informed or guided, the task of the counsel, although very important, is fairly simple. But with a jury the case is entirely different. Twelve men of different occupations, different grades of intelligence, different degrees of education and different habits of thought are called out from among their fellows and made to sit for five or six hours a day, and sometimes for several days, seated on hard and uncomfortable benches, with no facilities for making any notes, however complicated the case may be, and as a rule remorselessly snubbed by the Judge if they desire to assist their puzzled minds by asking questions on their own behalf.

It has always been a matter of wonder to me that juries should so seldom disagree, and that their verdicts should so constantly be right. I have often at the moment the verdict was given thought it to be wrong, but I cannot recall half a dozen cases in which I have thought so a week later, when the inevitable bias of the advocate has had time to pass away. And if my own interests were at stake, I would sooner submit the facts to the judgment of twelve of my fellow-countrymen than to a haphazard selection from among the judges of the King's Bench Division.

But to return to the immediate subject. The deficiencies and disadvantages of a jury make them more amenable to the guidance

of a counsel whose whole object is to lead their minds to a particular conclusion. He cannot tell how the twelve minds are working, but he knows that every incident in the case and every phrase which he uses is having its influence on some of the minds whose concurrence is necessary to his success. His whole conduct of the case, his constant presence in Court, his watchful attention to every detail, should be part of a combined address to the jury in which cross-examination and speeches are the most important passages. The cross-examination of the chief witness for the plaintiff is always of great importance. It is the first opportunity which the counsel for the defence has of indicating to the jury what is the case for the defence. I say indicating, instead of presenting, because the most skilful and effective cross-examination is that which interests the jury and sets them thinking what the answer to the plaintiff's case, or the case for the prosecution, can possibly be, and by the selection and arrangement of the facts referred to, suggests the defendant's case instead of stating it.

Presently comes the speech in which the defence is formulated; and if, listening to that speech, a juryman says to himself, "Why, that is just what occurred to me when the witness was in the box," the verdict, so far as he is concerned, is safe. The conclusion which his own intelligence has suggested must be right.

I knew in my earlier years at the Bar three great masters of the art of cross-examination. They were Ballantine, Hawkins and Coleridge. I have no doubt that we have their equals in the Courts today; at all events, the equals of two of them. Young members of the Bar now have the same admiration for Simon and F. E. Smith as I had for Hawkins and Coleridge, and with as good reason. A man always looks larger when he stands on a pedestal of age and experience higher than one's own.

The three I have mentioned were very different in style, but the secret of success with each of them was this, that he always tried to interest the jury, was never tedious, and never forgot that the object of cross-examination was not the collection of a complete series of facts, but the placing selected facts in such a light as to lead to a particular conclusion. And he never showed the violence and harshness which in the case of Sergeant Parry, and Charles Russell often spoiled a shrewd and powerful cross-

examination. It is fatal if the jury get the impression that the witness is being unfairly treated: they take the side of the witness against the counsel, and the decision is with them.

During the first twelve years of my practice Henry Hawkins was one of the most powerful leaders of the Common Law Bar, and as, through my friendship with W. R. Stevens, who was my fellow student at the City of London College, and was then a clerk in the office of the solicitor to the South-Eastern Railway, I obtained quite early some work in compensation cases, I saw more of him than of most of the other leaders. He was a man of middle height, with keen clean-shaven face, cold grey eyes, thin pitiless lips and a clear incisive voice; absolutely devoid of sympathy or enthusiasm, but with early cultivated dramatic art which enabled him to simulate with success either pity or indignation, while the cold accuracy of his intellectual processes was never disturbed by any emotion. He had prodigious industry, and no interest in life—artistic or literary or political—except that of making as much money as possible by his professional work; and he was always absolutely master of the facts of his cases. And he had the special weapon of a quaint and quizzical humour which noted and used improbabilities and inconsistencies, and constantly made the phrasing of a question, or a few words of irregular but excusable comment, serve the purpose at once of argument and of amusement.

John Duke Coleridge was in every respect—in appearance, in character, in his tastes and in his methods—a striking contrast to Hawkins. He was tall and graceful, moving always with a certain slow dignity. His face was of classic outline, and the clear complexion and the soft blue eyes gave it something of feminine beauty. A drawing of this face with its benign and almost holy expression would have served as a likeness of the “Seraphic Doctor”, and it was not strange that the Western circuit should have called Coleridge “good John”, while they called Karslake “handsome John”. But seen from the back he made a very different impression. He had a curiously long and shiny neck and I never walked behind him without thinking of the angel who brought down on the species which he for the moment employed as his disguise the decree that on their bellies

should they go thenceforth, and wondering why an exception should have been made in this case. And indeed Coleridge was more subtle than any counsel at the Bar. His cross-examination was always painstaking and ingenious, and the more closely the witness was entangled in the net the more suave and gentle was the manner of the cross-examiner. But the main characteristic of the process was its studious unfairness. Coleridge was in the habit of repeating a witness's answer or quoting it in a subsequent question. And somehow the phrase as repeated or quoted was not exactly the same as the witness had first used. The change was very slight, not sufficient to provoke comment. The witness, led quietly along from one admission to another, did not realise until the operation was over how completely he had given his case away.

William Ballantine, "The Sergeant" as he was called, although there were other Sergeants practising in his time—Parry, Atkinson, O'Brien and Simon among them—was the most remarkable man I ever knew at the Bar. He knew little of law or literature, he was not industrious, and his habits of life made him a rather unsafe leader in cases which lasted several days and involved any prolonged investigation of complicated detail. But as a cross-examiner he was supreme. It was not with him an art diligently studied and carefully applied. It was an instinct. He had a strong but not a handsome face; his voice had not the clear precision of Hawkins, or the musical sweetness of Coleridge, but had a wider range of tone than either, and was helped in its passages of pathos or sarcasm by a peculiar and habitual drawl. One could not say in what his personal charm resided. But it was unquestionably there. Whenever Ballantine appeared in Court he was the principal person there, and whether he was speaking or cross-examining, or only sitting watchful, awaiting his time for either, jury and counsel and judge were more interested in him than in any one else. During my first few years I used every morning to go into one of the Courts five minutes before the judge took his seat. It was the habit of leading silks then to accept small briefs and take as many as their clerks could collect. The last time I was with Huddleston, his clerk told me he had eleven jury cases in that day's cause list. As the judge came

in, the clerk of the leader, or of the busy junior, if the leader was there, would ask some young barrister to take a note, and in that way I got much practise in note-taking and made useful acquaintance with busy counsel and their clients. It was the taking of a note in this way which got me the first of a very long series of briefs from Mr. Lewis, afterwards the famous Sir George. But if I found I was not wanted I used to go to the Court where Ballantine was appearing and watch his conduct of the case.

One of the most useful pieces of advice I ever received was when Hawkins, quite early in my acquaintance with him, said, "Never examine or cross-examine from your brief. Know your brief and examine from your head." The marvel about Ballantine was that it did not seem necessary that he should know his brief. This, indeed, he seldom did. I remember being his junior in a special jury case tried at Kingston in which the South Eastern Railway Co. was tried for negligence causing injury to a passenger. These actions and actions for losses by fire formed a substantial part of an assize cause-list, for insurance companies had not then adopted the compulsory arbitration clause, and the medical man who was also the agent of the company to try and settle the claim was not as well known as he is now. Sergeant Ballantine was cross-examining the Plaintiff, and, not having read his brief, was making an inaccurate suggestion as to the facts. I spoke to him to point out this mistake. He took no notice, so I spoke to him again, whereupon he turned round to me and said in his loudest tones, "Damn you, Sir! Are you conducting this case or am I?" He made the handsomest apology afterwards in his speech, and told the jury that I knew the facts much better than he did, and that he ought to have thanked me, instead of losing his temper. (Let me say in a parenthesis that the reason why we juniors all liked Ballantine was that if we were helpful to him he always acknowledged it, and sometimes publicly. I have again and again heard him say in quoting a case that he was indebted for it to the industry of his junior, whom he would name.) Whether Ballantine knew his brief or not, when he came into court before the case had gone on long he seemed to dominate the whole discussion. I do not think I ever heard him quarrel with a judge or with a counsel

(although Huddleston's black-kid gloves and his other little mannerisms used to irritate him sorely), and he never lost the attention of the jury. The cross-examination that I remember best was that of the principal witness for the prosecution in the case of the brothers Reid, who were tried at the Old Bailey on a charge of having set fire to their wharf, the Barry Wharf at Rotherhithe. One of their workmen came and related that he, hidden in a corner of the wharf, had heard them arrange how the crime was to be committed. The Sergeant simply tore the witness to shreds and trampled him out of court.

The closing years of Ballantine's life were sorely troubled. His powers were somewhat failing and his practice was beginning to fall off when he was tempted by a fee of ten thousand guineas to go to India to defend the Gaekwar of Baroda, who was accused of having attempted to poison the British Resident at his court. The brief was offered to Hawkins, who rejected it, and would not be tempted by the offer to increase the fee to fifteen thousand. He told me he did not want to go, and therefore asked twenty thousand guineas, which he rightly thought would be prohibitive. Ballantine went, and succeeded in preventing a decision against the Gaekwar. But the incident was practically the end of his career. He did not bring back to England the whole of his big fee. Much of it was spent, as Henry Matthews said, upon the "naughty girls". And he never recovered a large practice. Presently his difficulties were so great that he had to leave England to escape arrest. His son Walter, who had married a rich widow, and was looking forward to a Parliamentary career, allowed him three hundred pounds a year, and another three hundred was made up by six barristers, each of whom gave fifty. I only know the names of four of them—Hardinge Giffard, Arthur Cohen, H. B. Poland and Montagu Williams. On this income Ballantine lived at Boulogne. Once I heard he was in London, and I got from Montagu Williams, his close and staunch friend, an address in Suffolk Street, Pall Mall. But when I enquired there I was told that he had left, and that he might be heard of at Jack Straw's Castle, Hampstead. I did not waste time in looking for him there.

Once, when I was staying with my wife and children at Folke-

stone, I met the Sergeant on the pier, and we spent an hour together. He told me that now and then he came over from Boulogne by one boat and went back by the next, running the risk of being arrested for the sake of having a walk upon English soil. He felt his exile keenly, and complained bitterly that he was treated as an outlaw. One of his old friends had asked him to come and spend a night in London, and instead of proposing that they should dine at his club, had suggested their going to Gatti's Restaurant in the Strand. It was a cruel blow. . . .

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